

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 553.

OSCAR LESER, EUGENE H. BEER, HARRY M. BENZINGER
ET AL., PLAINTIFFS-IN-ERROR,

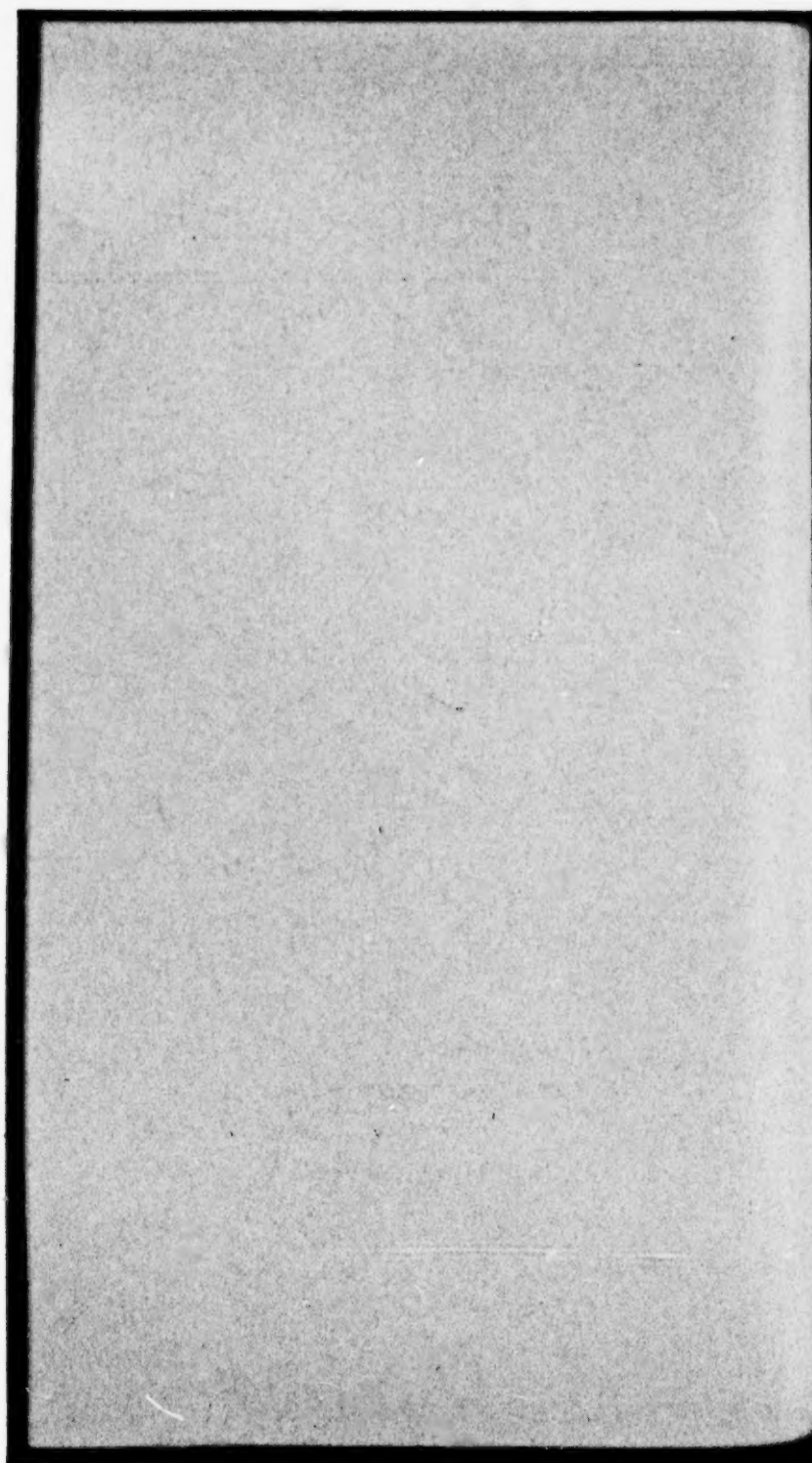
vs.

J. MERCER GARNETT, FREDERICK W. BECK, WILLIAM J
HOGAN ET AL., ETC., ET AL.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF
MARYLAND.

FILED SEPTEMBER 28, 1921.

(23,508)



(28,508)

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INDEX.

	Original.	Print.
Transcript of record from the Court of Common Pleas of Baltimore	a	1
Petition for writ of mandamus and order for summons....	1	1
Exhibits A and B—Challenges to board of registry....	8	7
C—Joint resolution No. 3.....	10	8
D—West Virginia proceedings.....	12	10
E—Tennessee proceedings	14	11
Appearance of defendant	17	13
Answer to the petition.....	17	13
Petition to add parties defendants.....	19	15
Agreements of counsel as to evidence.....	21	16
Judgment	23	17
Opinion, Heusler, J.	23	18
Exception to the ruling of the court.....	29	22
Plaintiffs' order of appeal.....	30	22

	Original.	Print.
Petitioner's bill of exception.....	30	22
Testimony of Oscar Leser.....	31	23
Stipulation as to evidence.....	35	26
offers of evidence	36	27
Extracts from Constitution of State of West Virginia..	36	27
Transcript of House Journals, Assembly of Tennessee..	39	29
Report of committees, etc.....	42	31
Journals of Senate and House of West Virginia.....	120	87
Correspondence from National Association Opposed to Woman Suffrage, etc.....	150	107
Proclamation of Secretary of State, etc.....	153	109
Certified copies of the 19th Amendment to the Consti- tution of the United States, etc.....	156	111
Proceedings in Legislature of Tennessee.....	183	131
Petitioners' prayers	198	142
Judge's signature settling bill of exceptions.....	203	146
Clerk's certificate	204	146
Opinion, Offutt, J.....	206	147
Judgment	234	161
Petition for writ of error.....	238	161
Order allowing writ of error.....	238	161
Assignment of errors.....	239	161
Bond on writ of error.....	244	168
Writ of error.....	245	170
Citation and service.....	247	171
Clerk's certificate	250	173

TRANSCRIPT OF RECORD FROM THE COURT OF COMMON PLEAS
OF BALTIMORE CITY IN THE CASE OF

OSCAR LESER et al., Plaintiffs,

VS.

J. MERCER GARNETT et al., Constituting the Board of Registry of the
Seventh Precinct of the Eleventh Ward of Baltimore City,
Defendants,

TO THE COURT OF APPEALS OF MARYLAND.

Wm. L. Marbury,
T. F. Cadwalader,
George Arnold Frick,
Everett P. Wheeler,
For Appellants.

Alexander Armstrong,
Lindsay C. Spencer,
Jacob M. Moses,
Maloy & Brady,
Howell & Yost,
For Appellees.

Filed March 10, 1921.

In the Court of Common Pleas.

OSCAR LESER et al., Plaintiffs,

VS.

J. MERCER GARNETT et al., Defendants.

Case Instituted in Court of Common Pleas, October 30th, 1920.

Petition and Order of Court for a Writ of Mandamus.

(Filed 30th Day October, 1920.)

In the Court of Common Pleas.

OSCAR LESER et al.

VS.

J. MERCER GARNETT et al., Constituting the Board of Registry of
the Seventh Precinct of the Eleventh Ward of Baltimore City.

To the Honorable Judge of said Court:

Your petitioners, Oscar Leser, a resident and registered voter of
the Eleventh Ward of Baltimore City and a citizen and taxpayer of

said City, and Eugene H. Beer, Harry M. Benzinger, John R. Bland, Thomas F. Cadwalader, Key Compton, W. Bernard Duke, John H. Ferguson, Joseph C. France, Robert Garrett, J. Hensley Johnson, Edward D. Martin, C. Wilbur Miller, Charles O'Donovan, Joseph Packard, Thomas Marshall Smith, Theodore E. Straus, Herbert T. Tiffany, Clement S. Ucker, Michael B. Wild, William E. P. Wyse, citizens, voters and taxpayers of the State of Maryland, all of whom are members of the Board of Managers of the Maryland

2 League for State Defense, an unincorporated association of citizens of this State, organized in the year 1919 with the following declared object:

"To oppose by all lawful means the ratification by the General Assembly of Maryland of the pending Woman Suffrage Amendment, thereby to preserve for the people of Maryland the right which they have possessed since colonial days to determine for themselves who shall be entitled to vote at their own elections, and thus preserve the essential feature of the sacred right of local government."

respectfully show unto your Honor:

I. That your petitioners feel aggrieved by the action of J. Mercer Garnett, Frederick W. Beck, William J. Hogan and Daniel Billmeyer, constituting the Board of Registry of the 7th Precinct of the Eleventh Ward of the City of Baltimore, in registering the names of Cecilia Streett Waters, a white female citizen, and Mary D. Randolph, a colored female citizen, at a session of the said Board held at the place of registry for said precinct on the 12th day of October, 1920, because the persons so registered are disqualified under the Constitution and laws of the State of Maryland and of the United States of America to vote at any election hereinafter to be held.

That the grounds of such disqualification were brought to the attention of said Board of Registry on the said 12th day of October, 1920, in the shape of two memoranda in writing, copies of which are filed herewith, marked "Petitioners' Exhibit A and B," respectively, which your petitioners pray to be taken and considered as a part hereof, but nevertheless the said Board of Registry overruled the challenge and objection of the petitioner, Oscar Leser, then and there made to them in the case of each of said persons, and admitted them to the said Registry as qualified voters.

II. That the so-called Nineteenth Amendment to the Constitution of the United States under and by virtue of which the said Board of Registry claim to exercise the right to admit said persons to the Registry of Voters, is not in fact or in law part of the Constitu-
3 tion of the United States, and is not in force and virtue within the State of Maryland for the following reasons:

(1) The said alleged amendment to the United States Constitution is not such an amendment as the Congress is authorized by Article V of the Constitution of the United States to propose to the legislatures of the several states to be by them ratified in accordance with said Article V, but is wholly outside of the scope and purpose

of the amending power conferred upon Congress, subject to the ratification by three-fourths of the State Legislatures, by the said article, as is more fully and expressly set forth in the resolution of the General Assembly of Maryland rejecting and refusing to ratify the said amendment at the January Session of 1920, a copy whereof marked "Petitioners' Exhibit C" is filed herewith and prayed to be taken and considered as a part hereof.

(2) That the said alleged Nineteenth Amendment to the Constitution of the United States was never in fact ratified by the Legislatures of three-fourths of the States now composing the United States of America, the proclamation dated August —, 1920, by the Honorable Bainbridge Colby, Secretary of State of the United States, to the contrary notwithstanding.

(a) Because of the fact that it was not ratified by the Legislature of the State of West Virginia, but on the contrary was defeated and rejected by the said Legislature.

(b) And because although the Legislature of the State of Missouri undertook to pass a resolution ratifying the said measure, nevertheless it was forbidden to do so by the following provision of the Constitution of the State of Missouri:

"Article II, Section 3. We declare, That Missouri is a free and independent State, subject only to the Constitution of the United States; and as the preservation of the States and the maintenance of their governments are necessary to an indestructible Union, and were intended to co-exist with it, the Legislature is not authorized to adopt nor will the people of this State ever assent to any amendment or change to the Constitution of the United States which may in any wise impair the right of local self-government, belonging to the people of this State."

4 And your petitioners are advised and therefore charge that this provision of the Constitution of the State of Missouri in no wise conflicts with any provision or part or purposes of the Constitution of the United States. That Article V of the Constitution of the United States confers upon the State of Missouri as upon every other State in the Union the power, acting through its legislature or through a convention called for the purpose, to cast one vote in favor of the ratification of any amendment proposed by the Congress of the United States and declares that when ratified by the legislatures of three-fourths of the states or by such conventions in three-fourths of the states, such proposed amendment shall become a part of the Constitution of the United States. But Article V of the Constitution of the United States does not impose or purport to impose any duty upon a state to exercise this privilege, either through its legislature or its conventions. On the contrary, each state is left free to determine "when" this privilege shall be exercised by its legislature or conventions, and the people of Missouri in adopting said provisions of their Constitution have chosen to say that so far as regards such proposed amendments as "may in any wise impair the right

of local self-government, belonging to the people of this State" it shall not be exercised at all. In other words, having power to say when its legislature should act, the people of Missouri have elected to say "never" so far as this class of amendments is concerned, and so long as the section above quoted is retained in the Missouri Constitution; it being obvious that an amendment like the so-called Nineteenth Amendment which would take away from the people of the State the power and the right to determine by their own votes who shall vote at their own State elections most seriously impairs their right of local self-government.

That therefore the action of the Legislature of the State of Missouri in undertaking to ratify the so-called Nineteenth Amendment, was and is utterly void and of non-effect.

(c) And because the Legislature of the State of Tennessee being a body created under and in pursuance of the Constitution of the said State and subject to the limitations therein expressed, undertook to act upon a resolution purporting to ratify the said alleged Nineteenth Amendment, yet its action in the premises was null and void for the reason that the members of the said legislature were elected prior to the submission of the said amendment by Congress to the Legislatures of the several States, and therefore by the provisions of the Constitution of the State of Tennessee, the said existing Legislature was prohibited from acting upon said alleged amendment. The provision of said Constitution being as follows:

"No convention or General Assembly shall act upon any amendment of the Constitution of the United States proposed by Congress to the several States, unless such convention or General Assembly shall have been elected after such amendment has been submitted."

And because even if the Legislature of the State of Tennessee at its session held in the month of August, 1920, were competent to act in the matter of ratification of the said amendment to the Constitution of the United States, the said legislature did not pass any resolution ratifying the said alleged Nineteenth Amendment, but did, in fact, defeat and reject such resolution.

III. That in support of the statements hereinbefore contained respecting the action of the Legislatures of West Virginia and of Tennessee your petitioners file herewith marked "Petitioners' Exhibit D and E," respectively, and prayed to be taken and considered as part hereof, brief statements of memoranda, showing the proceedings taken in the Senate of West Virginia and in the House of Representatives of Tennessee, respectively, in reference to the resolution of ratification as introduced in each of said bodies in regard to the settled rules of parliamentary procedure of said bodies and the constitutional provisions governing the organization and conduct of business of the said houses, and your Petitioners aver that the facts now shown are proper to be shown, notwithstanding the aforementioned proclamation of the Secretary of State of the United States, and notwithstanding any certificate or proclamation or official notice

6 that may have been furnished to the said Secretary of State by the executive officers of the States of West Virginia and Tennessee, respectively, because under and in pursuance of Article V of the Constitution of the United States, no amendment can become a part thereof until it is in fact ratified by the Legislatures of three-fourths of the States, and a certificate or official notice of the executive officers of such states or the proclamation of the Secretary of State of the United States contrary to the actual fact in this regard cannot cause an alleged amendment to be deemed as having been adopted and made a part of the Constitution contrary to the express terms and provisions of that instrument itself.

IV. And your petitioners further show that in a number of the States of the American Union, including the States of Massachusetts, New Jersey, Pennsylvania, Rhode Island, Arkansas, Maine, New Hampshire, Ohio, Iowa, Nebraska, Missouri, Texas, Kentucky and others, the people have seen fit to provide in their State Constitutions that the rights and duties pertaining to the elective franchise shall be limited to men. In these States the people have also provided that no changes should be made in their State Constitutions by any act or resolution of their State Legislatures and have thereby in effect forbidden their said respective State Legislatures to vote for the ratification of any proposed amendment to the Constitution of the United States which would have the effect of abolishing or changing the Constitution of the State.

Wherefore, your petitioners are advised and therefore charge that the action of the Legislatures of said above mentioned States in undertaking to ratify said Nineteenth Amendment to the Constitution of the United States, was and the same are utterly void and of non-effect.

Your Petitioners therefore pray:

First. That the names of the said Cecilia Streett Waters and Mary D. Randolph be struck off from the Registry of voters of the Seventh Precinct of the Eleventh Ward of Baltimore City as persons disqualified to vote.

7

And as in duty bound, etc.

OSCAR LESER,
THOMAS F. CADWALADER,
HARRY M. BENZINGER,
JOHN R. BLAND,
J. HEMSLEY JOHNSON,
EDWARD D. MARTIN,
KEY COMPTON,
EUGENE H. BEFR,
JOSEPH C. FRANCE,
JOSEPH PACKARD,
CLEMENT S. UCKER,
W. BERNARD DUKE,
JOHN H. FERGUSON,
ROBERT GARRETT,
C. WILBUR MILLER,
CHARLES O'DONOVAN,
THOMAS MARSHALL SMITH,
THEODORE E. STRAUS,
HERBERT T. TIFFANY,
MICHAEL B. WILD,
WILLIAM P. E. WYSE,

Petitioners.

WM. L. MARBURY,

Attorney for Petitioners.

STATE OF MARYLAND,

City of Baltimore, To wit:

Before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore City, on this 30th day of October, 1920, personally appeared Oscar Leser, one of the Petitioners named in the foregoing petition, and made oath in due form of law that the matters and facts therein stated are true to the best of his knowledge, information and belief.

Witness my hand and notarial seal.

[SEAL.]

ZELLA KUHN,

Notary Public.

8

Upon the foregoing petition and affidavit with the exhibits filed therewith, it is this 30th day of October, 1920, Ordered that the foregoing petition be set for hearing upon the 22nd day of November, 1920, and that the Clerk of this Court shall issue summons directed to the Sheriff of Baltimore City, requiring him to summon the Board of Registry of said Precinct to attend at the hearing

or by counsel, and that summons shall also be issued and served by the Sheriff upon the said Cecilia Streett Waters, residing at No. 824 N. Eutaw Street, and the said Mary D. Randolph (colored), residing at No. 334 W. Biddle Street, in Baltimore City, requiring them and each of them to attend at the hearing or by counsel, provided the said summons shall be so served upon the said parties prior to the 10th day of November, 1920.

WALTER L. DAWKINS.

EXHIBIT "A."

Baltimore, Md., October 12th, 1920.

To the Board of Registry of the 7th Precinct of the Eleventh Ward of Baltimore City:

The undersigned hereby challenges the right of Cecilia Streett Waters, a female citizen of the State of Maryland and a resident of the said precinct and ward of Baltimore City, to register as a qualified voter.

1st. Because the said Cecilia Streett Waters is a female citizen and the Constitution of the State of Maryland confines the right of suffrage to males.

2d. That the said Cecilia Streett Waters, has no legal right to register under the alleged Nineteenth Amendment to the Constitution of the United States:

a. Because the said alleged Nineteenth Amendment has never been legally proposed, ratified or adopted as a part of the Constitution.

b. Because the said amendment is invalid as being in excess of any power to amend the Constitution of the United States conferred by the provisions of Article 5 of the Constitution of the United States.

(Signed) OSCAR LESER,
*Individually and on Behalf of Members of the Board of
Managers of the Maryland League for State Defence.*

EXHIBIT "B."

Baltimore, Md., October 12th, 1920.

To the Board of Registry of the 7th Precinct of the Eleventh Ward of Baltimore City:

The undersigned hereby challenges the right of Mary D. Randolph, a colored female citizen of the State of Maryland and a resident of the said precinct and ward of Baltimore City, to register as a qualified voter.

1st. Because the said Mary D. Randolph, is a colored female citizen and the Constitution of the State of Maryland confines the right of suffrage to males.

2d. That the said Mary D. Randolph, has no legal right to register under the alleged Nineteenth Amendment to the Constitution of the United States:

a. Because the said alleged Nineteenth Amendment has never been legally proposed, ratified or adopted as a part of the Constitution.

b. Because the said amendment is invalid as being in excess of any power to amend the Constitution of the United States conferred by the provisions of Article 5 of the Constitution of the United States.

(Signed) OSCAR LESER,
*Individually and on Behalf of Members of the Board of
Managers of the Maryland League for State Defence.*

10

EXHIBIT "C."

Joint Resolution No. 3.

Entitled.

Joint Resolution of the Senate and House of Delegates of Maryland
Rejecting and Refusing to Ratify an Amendment to the Con-
stitution of the United States Proposed by Congress to the
Legislatures of the Several States.

Whereas, The General Assembly of Maryland has received official notification of the passage by both Houses of the Sixty-sixth Congress of the United States of a proposal to amend the Constitution of the United States, in the words following, to wit:

"Resolved by the Senate and House of Representatives of the United States of America, in Congress assembled (two-thirds of each House concurring therein), That the following Article is proposed as an amendment to the Constitution, which shall be valid to all intents and purposes as part of the Constitution when ratified by the Legislatures of three-fourths of the several States:

'Article —.

'The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

'Congress shall have power to enforce this Article by appropriate legislation.'"

Be it Resolved by the General Assembly of Maryland, That we deny that the Congress of the United States has any lawful right or power to propose such an amendment to the Constitution of the United States; we deny that the Legislatures of three-fourths of the States have any lawful right or power to adopt such an amendment;

and we deny that such an amendment would be validly a part of the Constitution of the United States if thus adopted, for the following reasons:

The avowed purpose of the people of the United States in adopting the Federal Constitution was to establish a perpetual Union of States.

11 In order that this great purpose might be accomplished, it was essential that each State should be preserved as an indestructible political unit.

In the oft quoted words of the Supreme Court of the United States, their purpose was to establish "an indestructible Union composed of indestructible States."

For "without the States in union, there could be no such political body as the United States."

It is manifest, therefore, that when the people, in this same Federal Constitution, conferred upon Congress and the Legislatures of three-fourths of the States the power to "amend" that Constitution, it could not have been their intention to authorize the adoption of any amendment, or any measure under the guise of an amendment, which would wholly or partially destroy the States, by taking away from the States any one of their functions essential to their separate and independent existence as States.

The right of a State to determine for itself by the vote of its own people, who shall vote at its own state, county and municipal elections is one of those functions.

When we surrender to any outside power the right to say who shall vote at our state elections, we surrender the right to determine who shall govern the state, and without the right of local self-government, we cease to be a state and become a mere province, with far less power to determine our own destiny than we had prior to the American Revolution, under the charter granted by the British Crown.

Resolved Further, That the General Assembly of Maryland could not exercise the power to ratify this so-called Nineteenth Amendment, conferred upon it, or supposed to be conferred upon it, by the Fifth Article of the Constitution of the United States, without violating, in most flagrant fashion, the Constitution of our own State.

The Constitution of Maryland limits the right of suffrage to men. The people of Maryland have not conferred upon their General Assembly any right to amend that Constitution by extending the franchise to women.

12 Yet, this proposed Nineteenth Amendment to the Federal Constitution, if adopted and held valid, would, in effect, amend the Constitution of the State of Maryland in that respect, and establish woman suffrage in this State, without the consent and it may be, contrary to the wishes of a majority of both the men and women of Maryland.

We conceive that the members of this General Assembly would be false to their duty to their own people, if not to their official oaths, if they should vote to ratify the proposed Amendment.

Wherefore, be it Further Resolved, That the General Assembly of this State hereby rejects the said Nineteenth Article, proposed

as an amendment to the Constitution of the United States, and, on behalf of the State of Maryland, refuses to ratify the same.

Resolved Further, That we solemnly protest to the Legislatures of those States who have heretofore voted to ratify such amendment against their action in thus seeking to force this measure upon our people, without their consent, and we earnestly appeal to the Legislatures of those States who have not yet voted to ratify it, not to do so.

And be it Further Resolved, That the Governor be requested to forward a copy of the foregoing preamble and Resolutions, duly attested, to the Secretary of State of the United States, our Representatives and Senators in Congress, to the Governors of each of the States and to the presiding officers of each House of the Legislatures thereof.

EXHIBIT "D."

West Virginia Proceedings.

The Legislature of the State of West Virginia consists of two Houses, a Senate and a House of Delegates, constituted according to the provisions contained in the Constitution of West Virginia. The consent of both Houses is necessary to the passage of any bill or resolution by said legislature. Each House is required by

13 the Constitution of West Virginia to determine the rules of its proceedings, and any action taken by members of either House thereof contrary to the provisions of the Constitution of said State, or in disregard or violation of the rules of parliamentary procedure of such House is not the act of each House as an integral member of said legislature. Said rules of the Senate provide among other things that when a resolution has been voted upon and either passed or defeated, a motion may be made to reconsider such vote, and if such motion is defeated, the original vote must stand as the judgment of the Senate and it cannot be again acted upon during the session. Said rules also provide for their own suspension by a two-thirds vote.

The Legislature of West Virginia was called into special session on February —, 1920. The resolution ratifying the alleged Nineteenth Amendment to the Constitution of the United States was voted upon in the Senate of West Virginia on March 1st, 1920, and was defeated. On March 3rd, 1920, a motion to reconsider this vote was made and was defeated. Nevertheless on March 10th, 1920, the members of the Senate voted again upon the original resolution and 15 votes were recorded in favor thereof and 14 opposed. No motion to suspend the rules of the Senate was offered or voted upon.

A certain A. R. Montgomery, previously elected and qualified as a member of said Senate, was then present and desirous of voting in the negative, but by a majority of one the Senate refused to allow him to take his seat or to vote. The Constitution of West Virginia requires a two-thirds vote of the Senate to expel a member. Senator Montgomery was not charged with any offense or misconduct or conduct

justifying his expulsion, and no resolution to expel him was offered or voted upon.

At the same time a certain Raymond Dodson, previously elected and qualified as Senator from the 8th Senatorial District, but who had removed his residence to another Senatorial District, to wit, the 4th Senatorial District, prior to the holding of said special session of the Legislature, was permitted to vote unchallenged, and voted in favor of said resolution of ratification, although the Constitution of West Virginia provides that if any member of the Legislature removes from the district for which he shall have been elected his seat shall be thereby vacated.

The Governor of West Virginia notified the Secretary of State of the United States that the Legislature of West Virginia did on March 10th, 1920, ratify the Nineteenth Amendment, but said notification was based upon the vote recorded in the manner and under the circumstances above set forth.

EXHIBIT "E."

(Tennessee Proceedings.)

The Legislature of the State of Tennessee consists of two houses, a Senate and a House of Representatives, constituted under the Constitution of Tennessee. The consent of each of said two houses is necessary to the valid passage of any bill or resolution by said Legislature. Each house is empowered by the Constitution of Tennessee to adopt rules of parliamentary procedure. The House is entitled, by the terms of the constitution, to a membership of ninety-nine members, and the Senate to a membership of thirty-three. The constitution fixes a quorum for each of the respective houses at two-thirds of the number of members to which such house is "entitled." The House of Representatives has no constitutional power to pass a valid resolution ratifying an amendment to the Federal Constitution unless at least sixty six members (the constitutional quorum) are present.

The Legislature of Tennessee was elected in the year 1918, before the so-called Nineteenth Amendment had been proposed by the Congress or submitted to the Legislatures of the several States.

On or about August 5th, 1920, the Governor of Tennessee issued a call for a special session of the Legislature to convene on August 9th, 1920.

At said special session a joint resolution to ratify the so-called Nineteenth Amendment to the Constitution of the United States (abolishing the distinction of sex in respect of suffrage) was offered for passage in the Senate of Tennessee and declared passed by a vote of a majority of the members, a constitutional quorum being present.

On August 18th, 1920, said joint resolution was taken up for action by the House of Representatives of Tennessee. A motion to lay the resolution on the table was lost by a tie vote of 48 to 48. Subsequently, on the same day, a vote was taken on the passage of the said resolution, resulting in 50 ayes and 48 noes. Before the result became final, under the rules of the House, and in accordance with

the procedure defined by said rules, a motion to reconsider the said vote was then and there entered on the records of the House at the instance of a member who had voted for the resolution.

Under the rules of the House the entry of said motion to reconsider estopped final action on the resolution to ratify until said motion to reconsider should be disposed of by the House.

On August 21st 1920, at a so-called session of the House at which only 59 members were present (being 7 less than the constitutional quorum of 66) a majority of the members present, recognizing the necessity of first disposing of the motion to reconsider, but asserting through their leader on the floor of the House that when a State Legislature takes action on a resolution to ratify an amendment to the Constitution of the United States it is bound neither by the constitution or laws of the State nor by the rules of parliamentary procedure adopted by the respective houses in accordance with such State constitution, voted to reconsider the vote of August 18th aforementioned, and then voted to concur in the previous action of the Senate, that is, to approve the resolution of ratification.

On August 31st, 1920, after the people of Tennessee had had the opportunity of making their wishes known to their representatives, a session of the House was held at which 91 members were present. At said session the House took up the aforementioned motion to reconsider of August 18th, and by a viva voce vote adopted it 16 and reconsidered the vote of August 18th on the resolution to ratify the so-called Nineteenth Amendment. Thereupon, in strict accordance with the rules of the House and the recognized usages of parliamentary procedure, the House voted down the resolution to ratify said amendment by voting, 47 ayes to 24 noes, not to concur in the previous favorable action of the Senate on said resolution to ratify said amendment. In addition to the 71 members of the House so participating in the aforesaid action of August 31st, there were 20 members present and not voting.

The House also, thereafter and on the same day, with a quorum present, by appropriate proceedings expunged from the Journal and record of the House, the entire record of the action of the quorumless House taken on August 21st and heretofore described. On September 1st, the Senate, by a vote of 24 ayes to 3 noes, accepted the message from the House showing the reconsideration and rejection of said amendment, as aforesaid.

The official actions and proceedings in this exhibit set forth appear on the journals and records of the respective houses.

Notwithstanding the failure of the Legislature of Tennessee to ratify the so-called Nineteenth Amendment by valid and lawful proceedings, the Governor of Tennessee, as your petitioners are informed and believe and therefore aver, on or about August 24th, 1920, transmitted to the Secretary of State of the United States a certificate describing the proceedings of the two houses up to that date, substantially as above set forth and stating that said Amendment had been ratified in manner and form as appears by the said official record of the proceedings, but said Governor did not certify that said Amendment was adopted by the Legislature of Tennessee according to the

provisions of the Constitution of the United States, as is required by Section 205 of the Revised Statutes of the United States.

On or about September 4th, 1920, the Governor of Tennessee transmitted a second certificate to the Secretary of State of the United States, containing a certified copy of the entries in the Journal of the House showing the action of said House as hereinbefore described, taken subsequently to August 23d, reconsidering and rejecting the resolution of ratification and expunging from its journal the record of pretended ratification by the quorumless House on August 21st, 1920.

4th December, 1920.—Appearance of Defendant by attorney.

Same day the Defendants, by their attorneys, filed the following Answer to the Petition:

In the Court of Common Pleas.

OSCAR LESER et al.

VS.

J. MERCER GARNETT et al., Constituting the Board of Registry of the Seventh Precinct of the Eleventh Ward of Baltimore City.

To the Honorable the Judge of said Court:

Your respondents, J. Mercer Garnett, Frederick W. Beck, William J. Hogan, and Daniel Billmyer, constituting the Board of Registry of the Seventh Precinct of the Eleventh Ward of the City of Baltimore, answering the petition of Oscar Leser and others heretofore filed and exhibited against them herein, respectfully show unto your Honor:

I. That this Honorable Court is without jurisdiction to hear and determine the matters alleged in said petition, because to do so would be to deny full faith and credit in this State to the public Acts, Records, and Judicial Proceedings of other States, in violation of Section 1 of Article 4 of the Constitution of the United States, and to question the validity of an official act duly performed by the Secretary of State of the United States.

II. Your respondents, further answering, respectfully show that this Honorable Court is without jurisdiction to entertain said petition, because no application was ever made to your respondents to strike from the list of persons registered as qualified voters the names of the persons whom the petitioners have by their petition prayed this Honorable Court to strike from the register of voters of the Seventh Precinct of the Eleventh Ward of Baltimore City, nor either of them, nor was the registered address of either of said persons placed upon any list of the registered addresses of those persons registered as qualified voters in said precinct whom any one of the officers of registration suspected not to be qualified voters or against whom any voter of the said ward had

made complaint, nor was any other legal proceeding taken before your respondents, constituting the Board of Registry of the Seventh Precinct of the Eleventh Ward of Baltimore City, to prevent the registration of said persons or either of them in said precinct, or to strike the name of either of said persons from the list of those who had been registered as qualified voters in said precinct, nor was any hearing legally held before your respondents, constituting said Board, with reference to the right of said persons or either of them to register in said precinct or to have their names or either of their names upon the register of qualified voters in said precinct.

III. Your respondents reserving to themselves all right of demurrer to the said petition, and objection to the jurisdiction of this Honorable Court, both for the reasons above stated and for other reasons to be hereafter shown, further answering, say that they deny that the persons registered in said Seventh Precinct of said Eleventh Ward, as alleged in the first paragraph of said petition, are disqualified under the Constitution or the laws of the State of Maryland and of the United States of America to vote at any election hereafter to be held, but admit that the grounds of disqualification alleged by the petitioners were brought to the attention of said Board of Registry on the 12th day of October, 1920, as alleged in said petition, but your respondents deny that the grounds of disqualification alleged by said petitioners were valid.

IV. Further answering, your respondents, deny the allegations of fact made in the second, third and fourth paragraphs of said petition.

19 And having fully answered the said petition, your respondents prays that said petition may be dismissed.
And as in duty bound, etc.

ALEXANDER ARMSTRONG,

Attorney-General;

LINDSAY C. SPENCER,

Assistant Attorney-General,

Attorneys for Respondents,

Service of copy admitted this 3rd day of December.

W. L. MARBURY,

Attorney for Petitioners.

13th December, 1920.—Petition to Add Parties Defendants.

In the Court of Common Pleas.

OSCAR LESER et al.

VS.

J. MERCER GARNETT et al., Constituting the Board of Registry of the Seventh Precinct of the Eleventh Ward of Baltimore City.

To the Honorable the Judge of said Court:

The petition of Caroline Roberts, Clara T. Waite, Josephine L. Chatard, Eugenia H. Parker, Madeline Le Moyne Ellicott, A. Page Reid, Margaret T. Carey, Anna W. Heath, Evelyn P. Lord, Annie Jantney, Mary W. Ramey, and Hattie M. Emmert, citizens and tax payers of the State of Maryland, and being the Officers and Directors of the Equal Suffrage League of Baltimore, Inc., a body corporate, duly incorporated under the laws of the State of Maryland, with the following declared object, viz:

"To promote the cause of equal suffrage and to effect the political enfranchisement of women."

20 By Jacob M. Moses, Maloy & Brady and Howell & Yost,
their attorneys,

Respectfully shows unto your Honor:

1. That your petitioners feel a special and lively interest in the above-entitled cause, and in the petition brought by Oscar Leser and others therein, inasmuch as by the said petition the validity of the Nineteenth Amendment to the Constitution of the United States and the right of female citizens to be registered as voters in the State of Maryland are attacked; that therefore your petitioners desire to be represented by counsel at the hearing of the above entitled cause and to be allowed to present arguments and briefs in opposition to the aforesaid petition of Oscar Leser and others.

2. That your petitioners bring this their petition with the full knowledge and consent of the Attorney-General of the State of Maryland, representing the defendants in the above-entitled cause.

Your petitioners, therefore, pray:

1. That your petitioners may be allowed to appear and be represented by counsel at the hearing of the above-entitled cause and to present arguments and briefs therein.

And as in duty bound, etc.

JACOB M. MOSES,
MALOY & BRADY,
HOWELL & YOST,
Attorneys for Petitioners.

STATE OF MARYLAND,

City of Baltimore, To wit:

I hereby certify, that on this 11th day of December, in the year 1920, before me the subscriber, a Notary Public, of the State of Maryland, in and for the City of Baltimore, aforesaid, personally appeared Madeline Le Moyne Ellicott one of the petitioners and made oath in due form of law that the matters and facts set out in the foregoing petition are true and bona fide.

21 As witness my hand and Notarial Seal.

JOHN McCULLOUGH,

Notary Public. [SEAL.]

Ordered as prayed this 13th day of December, 1920.

CHAS. W. HEUSLER.

14th December, 1920.—Agreements of Counsel filed.

In the Court of Common Pleas.

OSCAR LESER et al.

VS.

J. MERCER GARNETT et al., Constituting the Board of Registry of the Seventh Precinct of the Eleventh Ward of Baltimore City.

To the Honorable the Judge of said Court:

It is stipulated by counsel for the petitioners and the Attorney-General of Maryland, as counsel for the respondents in the above-entitled case, as follows:

1. That the Constitution of any State or any part of such Constitution may be read in evidence from any printed volume purporting to contain such Constitution and the said printed volume shall in this case be received as evidence of said Constitution without any further authentication of proof thereof. (Art. 35, Sec. 53, p. 984 Annotated Code of Maryland.)

2. That the decisions rendered by the Court of last resort of any State of the United States, may be read as evidence of the law of such state, from any printed volume purporting to contain such decisions.

3. That the Journals of the Senate and the House of West Virginia at the extraordinary session of 1920, may be read in evidence from the printed volume purporting to contain said Journals and that the Rules of the said Senate may be read in evidence from the printed pamphlet or pages purporting to contain the said rules. The same being identified by the initials of counsel for the petitioners and respondents.

4. That where the rules of any legislative body are offered in evidence and contain an incorporation by reference to rules of par-

liamentary procedure contained in other printed volumes or standard authorities, such as Reed's Rules of Order, or Jefferson's Manual, or Roberts' Rules of Order, the same may be read in evidence from any printed volume purporting to be a copy of such work.

The above stipulations are subject to the understanding that the right to object and except to the relevancy of any evidence offered in the case is hereby reserved.

W. L. MARBURY,
Attorney for Petitioners.
ALEXANDER ARMSTRONG,
Attorney for Respondents.

In the Court of Common Pleas.

OSCAR LESER et al.

VS.

J. MERCER GARNETT et al., Constituting the Board of Registry, etc.

It is hereby agreed and stipulated that Mercer Garnett et al., the respondents, may introduce in evidence copies bearing the certificate of the Secretary of State of the United States of the several resolutions and certificates heretofore sent by the Executives of the States of West Virginia, Tennessee and Connecticut, in relation to the suffrage Amendment to the Secretary of State of the United States of America, to have the same effect and import as if said certificates and
23 resolutions were now offered in evidence, it being the intent and purpose to agree to the use of said copies, but it being understood and agreed that all right of objection upon any other ground shall be and is hereby reserved, and that either party may offer copies certified as above of any other certificates or resolutions sent by any of said executives to the Secretary of State of the United States of America in relation to said alleged amendment, at any subsequent stage of the proceedings in this Court.

T. F. CADWALADER,
W. L. MARBURY,
Attorneys for Petitioners.
LINDSAY C. SPENCER,
GEO. M. BRADY,
Attorneys for Respondents.

December 14, 1920.

28th January, 1921.—Petition Dismissed. Opinion of Court thereon filed.

In the Court of Common Pleas of Baltimore City.

OSCAR LESER et al.

VS.

J. MERCER GARNETT et al.

Opinion.

HEUSLER, J.:

The petitioners in the above case being citizens, voters and taxpayers of the State of Maryland and members of the Board of Managers of the Maryland League for State Defense, "organized to oppose, by all lawful means, the ratification by the General-Assembly of
24 Maryland of the Woman Suffrage Amendment thereby to preserve for the people of Maryland the right which they have possessed since colonial days to determine for themselves who shall be entitled to vote at their own elections and thus preserve the essential feature of the sacred right of local government," in their petition filed in this case, for relief pray "that the names of Cecilia Street Waters and Mary D. Randolph be struck from the registry of voters of the Seventh Precinct of the Eleventh Ward of Baltimore City, as persons disqualified to vote."

These two names were on said registry books by virtue of the provisions of an amendment to the Constitution of the United States known as the Nineteenth Amendment, which reads as follows:

"Sec. 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State on account of sex.

"Sec. 2. The Congress shall have power to enforce this Article by appropriate legislation."

The object of the petition is to test the validity of this Nineteenth Amendment, the Maryland Constitution expressly limiting the right of suffrage to males,—and the following reasons are assigned:

1. "The said alleged amendment to the United States Constitution is not such an amendment as the Congress is authorized by Article 5 of the Constitution of the United States to propose to the Legislatures of the several States to be by them ratified in accordance with said Article 5, but is wholly outside of the scope and purpose of the amending power conferred upon Congress, subject to ratification by three-fourths of the State Legislatures, by the said Article;" and,

2. "That the said alleged Nineteenth Amendment to the Constitution of the United States was never in fact ratified by the Legislatures of three-fourths of the States, now composing the United States of America, the proclamation dated August 26, 1920, by the Honorable Bainbridge Colby, Secretary of State of the United States to the contrary notwithstanding."

25 At the outset of this opinion—the Court desires to repeat the statement made in the brief submitted by counsel for Caroline Roberts et al.: “the expediency or wisdom of extending the franchise to women; whether as a matter of fact the vote was desired by the women of the country as a whole; the fact that by the amendment a large class of women of undesirable character and race are enfranchised; and other similar questions are all foreign to this case. The only question at issue is as to the validity or invalidity of the Nineteenth Amendment.”

To evidence and Exhibits in evidence, tending to show the facts set out in the second reason, objection was made that same was incompetent, irrelevant and improper because this Court cannot and should not make such enquiry,—and by reference to and examination of legislative proceedings and Journals of the States of West Virginia and Tennessee,—ascertain and determine the fact whether or not those States have failed to ratify the Amendment.

The determination of the validity of ratification of Constitutional Amendments is a judicial function. Full faith and credit must be given to all legislative acts—but that means “the same and no more, to which they are entitled in the State whose acts they are.”

2 Tucker on Constitution, 626.

These legislative acts of West Virginia and Tennessee, as to their validity, have not been determined by the exercise of any local judicial function. The Courts of those States had the right to go behind the certificates, and if they do not or will not do so, any sister State has the same right. The evidence is legally admissible; its probative value and bearing on this proceeding; or its control and explanation by the other evidence submitted by the Respondents is another and different thing. Under the circumstances of this proceeding it seems manifestly proper and necessary to complete and fill out the record—so that further examination and ultimate adjudication may have access to and the benefit of all the evidence.

The fundamental question is set out clearly in the first reason:—
 26 “that it is not such an amendment as the Congress is authorized by Article 5 of the Constitution of the United States to propose to the Legislatures of the several States to be by them ratified in accordance with said Article 5, but is wholly outside of the scope and purpose of the amending power conferred upon Congress, subject to ratification, etc.”

Article 5 reads as follows:

“The Congress whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, which in either case, shall be valid to all intents and purposes as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States or by conventions in three-fourths thereof, as one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year 1808 shall in any manner affect the first and fourth clauses in the

ninth Section of the first Article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate."

This Article was one of the seven Articles which made up the original Constitution,—and which was ratified in convention by unanimous consent of twelve States present (Maryland being one) on September 17, 1787.

This Constitution was preceded by the following formal, solemn and well considered Preamble:

"We, the people of the United States, in order to form a more perfect Union, establish Justice, insure Domestic Tranquillity, provide for the common Defense, promote the general Welfare, and secure the Blessings of Liberty—to ourselves and our Posterity—do ordain and establish this Constitution for the United States of America."

By this Constitution, in accepted form, the Sovereign People of America spoke—and, in Article 5, the same people reserved the power to themselves, through the Congress, to propose Amendments to this Constitution, subject to the two provisos in said Article set out; (a) "that no amendment which may be made prior to the year 1808 shall in any manner affect the First and Fourth clauses in the

27 Ninth Section of the First Article;" and, (b) "that no State, without its consent, shall be deprived of its equal suffrage in the Senate"; and, in the same Article they set out the manner in which any proposed Amendments, through Congress, should be acted on by that Congress and the State Legislatures, to validate the amendment.

Two years and eight days thereafter—the First Congress, on September 25, 1789, proposed the first Ten Amendments to the Legislatures of the several States—and they were ratified by eleven States (Maryland responding quickly on December 19, 1789)—the Congressional Journal showing no action by Connecticut, Georgia and Massachusetts. These Ten Amendments constitute the National Bill of Rights. They provide for—freedom of religion, speech and press; the right of the people of a free State to keep and bear arms; the quartering of United States soldiers; the right of the people against unreasonable search and seizure; the right to answer only on presentment or indictment—the right of jeopardy and right of testimony—the right of life, liberty and property and the security of private property against public use; the right to speedy, public and jury trial and confrontation of witnesses; the right of trial by jury in civil cases; the right of protection against excessive bail or fines and cruel or unusual punishment—and finally, in Articles 9 and 10, the right to insist "that the enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people;" and that "the powers not delegated to the United States by the Constitution nor prohibited by it to the States are reserved to the States respectively or to the people."

This Bill of Rights is called in the Preamble to the Ten Articles, "Articles in Addition to and Amendment of the Constitution of the United States of America—proposed by Congress and ratified by

the Legislatures of the several States, pursuant to the Fifth Article of the original Constitution."

They were submitted to the States during a period of more than two years after Article 5 had been adopted; their pronouncement of rights is so searching and detailed; and the life, liberty and property of the sovereign people, and "the essential features of local government"—and all the rights that flow therefrom—are so earnestly ascertained and jealously safeguarded,—that the conclusion is irresistible that the Article 5 was the subject of much earnest, honest, intelligent and painstaking examination and study upon the part of the Founders of the Government and their advisers—and they knew that Article and what it meant—and they let it stand unchanged, reserving in the provisos all they desired to reserve, and that was, (1) the right of any of the States to admit immigrants for a certain period of time, without the let or hindrance of Congress except a slight per capita tax not exceeding ten dollars; and, (2) no capitation or other direct tax to be laid unless in proportion to a certain census or enumeration, these two being the invitation to the world to come to the possibilities and blessings of the New Republic and absolutely beyond amendment prior to the year 1808. The other proviso of Article 5, unchanged from the beginning, declared "that no State without its consent should be deprived of its equal suffrage in the Senate."

What these words meant in 1787 they meant in 1789—and they have no different meaning now;—no amendment, without her consent, can deprive Delaware of her two United States Senators, and, no amendment without the consent of all the other States, can give more than two to Texas or New York.

This Court is of opinion that the power of amendment to the Federal Constitution is substantially unlimited, and agrees with Tucker, "that the only limitation upon the amending power is that with respect to equal suffrage in the Senate";

Tucker, *Constitution of the United States*, Vol. 1, 397-399; and is of opinion that the words—"equal suffrage in the Senate," has no meaning but the one above set out.

To resume and conclude this Court is of opinion—that the power to amend the Constitution of the United States granted by the Fifth Article thereof, is without limit, except as to the words, "equal suffrage in the Senate"; and those words have no other meaning than that hereinbefore announced; that by no implication can you read a limit to that power;—and that the aforesaid Nineteenth

Amendment does not in any way violate the guarantee contained in Sec. 4, Article 4 of the said Constitution, which provides that "the United States shall guarantee to every State in this Union a Republican Form of Government, etc."

The Court is further of the opinion from all the exhibits and other evidence submitted that there was due, legal and proper ratification of the Amendment by the required number of State Legislatures.

Accordingly all the instructions submitted will be refused, and an order signed dismissing the petition with costs.

28th January, 1921.—Exception to the ruling of the Court filed.

In the Court of Common Pleas.

OSCAR LESER et al.

VS.

J. MERCER GARNETT et al., Constituting the Board of Registry of the Seventh Precinct of the Eleventh Ward of Baltimore City.

The Petitioners, upon the filing of the Opinion of the Court and his Honour's ruling refusing the prayers of the Petitioners, respectfully note an exception to the refusal of the said prayers by the Court and note an exception to the ruling in said Opinion that the said alleged Nineteenth Amendment to the Constitution of the United States is valid as a part of said Constitution.

THOS. F. CADWALADER,
GEORGE A. FRICK,
EVERETT P. WHEELER,
WM. L. MARBURY,

Attorneys for Petitioners.

30 And on 28th day of January, 1921, Plaintiffs' Order of Appeal filed.

17th February, 1921.—Bill of Exceptions filed.

Petitioner's Bill of Exception.

In the Court of Common Pleas.

OSCAR LESER et al.

VS.

J. MERCER GARNETT et al., Constituting the Board of Registry of the Seventh Precinct of the Eleventh Ward of Baltimore City.

February 4, 1921.

At the trial of this case before his Honor, Judge Charles W. Heusler, in the Court of Common Pleas, the petitioners, to maintain the issues on their part, offered the following evidence:

WILLIAM P. WELLS, a witness of lawful age, being duly sworn, testified that he was clerk of the Supervisors of Election, and he thereupon, upon request, produced and identified the following books which were offered in evidence, to wit:

The original books of registry of the Seventh Precinct of the Eleventh Ward of Baltimore City, kept in duplicate, being the books of registry used in said precinct on the several days of regis-

tration and election provided by law during the months of September, October and November, 1920, of which books the only material parts are those contained on page 110 and page 84 respectively. Page 110 shows, in the respective columns as provided by law, the following entries concerning Cecelia Street Waters, as read by the witness: "824 North Eutaw Street, second floor; Waters, Cecelia Street, Democrat; sworn; 69; Maryland; white; nine years; nine years; 69 years; native; yes; 1920; October 12. The lady signed her name. Shows that she did not vote at the election."

Under the head of "Remarks," admitted over the objection of the respondent, appear the words: "Right to register challenged by Oscar Leser as per memorandum. Challenge overruled by judges."

There was a formal memorandum filed with the Board of Registry and returned to the Supervisor's office.

The witness testified that he had made a thorough search for this memorandum but that it had been mislaid and he was unable to discover it.

On page 84 the following entries appear concerning Mary D. Randolph, as read by the witness: "331 W. Biddle Street, second floor; Randolph, Mary D.; Republican; sworn; 24; Maryland; colored; three years; three years; 24 years native; yes; 1920; October 12. Signature, Mary D. Randolph. This woman voted."

Under the column entitled "Remarks," appears the entry: "Right to register challenged by Oscar Leser as per memorandum filed. Overruled by judges."

Formal memorandum was similarly filed in this case with the Board of Registry and returned to the Supervisor's office. Witness testified that he had made a search for same but was unable to discover it.

The respondent moved to strike out the answer to the question "Under the head of remarks, what does that book show?" which had been answered as above. The motion was overruled.

Whereupon, OSCAR LESER, a witness of lawful age, produced and duly sworn, testified as follows:

"I am a citizen of the State of Maryland and resident of the City of Baltimore, and am one of the petitioners in this proceeding. I am acquainted with all the petitioners whose names appear in this petition. I am a member of the Board of Managers of the Maryland League for State Defense, and the other petitioners are also members of that Board. This League is an unincorporated association of the citizens of this State organized in the year 1919 with the declared object which is fully stated in the petition. I appeared before the Board of Registry of the Seventh Precinct of the Eleventh Ward on October 12, 1920.

"Q. What did you do there?"

(Objected to; objection overruled.)

"A. I appeared before the Board of Registry accompanied by Mr. Cadwalader, one of the counsel for the League, in order to challenge the right of a woman to register. I had no particular designs against any special lady; was willing to take chances on who should come in. Luck would have it that Miss or Mrs., I do not know which, Cecilia Street Waters made her appearance. As she offered to go through the form of registration I addressed the Board of Registry and challenged their right to register her and her right to be registered.

"(Mr. Spencer:) We object to the statement of the witness and move to strike it out.

"(Objection overruled.)

"(The Witness:) I stated briefly the reasons which were also embodied in a written memorandum which I asked the registrars to file of record.

"(Mr. Spencer:) We object to this.

"(Objection overruled.)

"(The Witness:) The Board conferred and announced a decision overruling my challenge and allowed the lady to be registered.

"(Mr. Spencer:) We move to strike out the answer.

"(Motion overruled.)

"(The Witness:) They made an entry on the record of their action. Subsequently I went through substantially the same proceeding with Mary D. Randolph, a young colored woman.

"(Mr. Spencer:) We move to strike out the answer.

33 "(Motion overruled.)

"(The Court:) With the same result, Judge Leser?

"(The Witness:) With the same result and the same entries on the record.

"(Mr. Spencer:) We move to strike out that answer.

"(Motion overruled.)

"Q. Are the entries made by the registrars on the record the same that have been read to the Court by the previous witness?

"A. They are.

"Q. Did you see them made?

"A. I did.

"(Mr. Spencer:) We move to strike out the last two questions and answers.

"(Motion overruled.)

"Q. Were these two female respondents, Miss Waters and Mary Randolph, present when you made the challenge?

"A. Yes.

"(Mr. Spencer:) We move to strike out the answer.

"(Motion overruled.)

"Q. You heard Mr. Wells' testimony as to his inability to locate the original memorandum; I now show you the papers filed with the petitioner marked Exhibit- A and B respectively purporting to be copies thereof, and I will ask you to look at them and state whether or not they are as a matter of fact copies of the same memoranda that you filed as you have stated?

"A. They are exact copies.

"(Mr. Cadwalader:) I offer them in evidence.

"(Objected to; objection overruled.)

"(Papers referred to, having been offered in evidence, were marked Petitioner's Exhibits 1 and 2.)

"(Cross-examined waived.)"

The petitioners here offered a stipulation of counsel in the following words, to wit:

34

"In the Court of Common Pleas.

"OSCAR LESER et al.

VS.

J. MERCER GARNETT et al., Constituting the Board of Registry of the Seventh Precinct of the Eleventh Ward of Baltimore City.

"It is stipulated by counsel for the petitioners and the Attorney General of Maryland, as counsel for the Respondents in the above entitled case, as follows:

"1. That the Constitution of any State or any part of such Constitution may be read in evidence from any printed volume purporting to contain such Constitution and the said printed volume shall in this case be received as evidence of said Constitution without any further authentication or proof thereof. (Art. 35, Sec. 53, pg. 984, Annotated Code of Maryland.)

"2. That the decisions rendered by the Court of last resort of any State of the United States, may be read as evidence of the law of such State, from any printed volume purporting to contain such decision.

"3. That the Journals of the Senate and the House of West Virginia at the extraordinary session of 1920, may be read in evidence from the printed volume purporting to contain said Journals and that the Rules of the said Senate may be read in evidence from the printed pamphlet or pages purporting to contain the said rules. The same being identified by the initials of counsel for the Petitioners and Respondents.

"4. That where the rules of any legislative body are offered in evidence and contain an incorporation by reference to rules of parliamentary procedure contained in other printed volumes or standard authorities, such as Reed's Rules of Order, or Jefferson's Manual, or Robert's Rules of Order, the same may be read in evidence from any printed volume purporting to be a copy of such work.

"The above stipulations are subject to the understanding that the right to object and except to the relevancy of any evidence offered in the case is hereby reserved.

(Signed)

W. L. MARBURY,

Attorney for Petitioners.

(Signed)

LINDSAY C. SPENCER,

Attorney for Respondents."

The following further stipulation, signed by counsel in the case was also filed as a part of the record:

"In the Court of Common Pleas.

"OSCAR LESER et al.

vs.

"J. MERCER GARNETT et al., Constituting the Board of Registry, etc

"It is hereby agreed and stipulated that Mercer Garnett et al., the respondents, may introduce in evidence copies bearing the certificate of the Secretary of State of the United States of the several resolutions and certificates heretofore sent by the Executives of the States of West Virginia, Tennessee and Connecticut, in relation to the Suffrage Amendment to the Secretary of State of the United States of America, to have the same effect and import as if said certificates and resolutions were now offered in evidence, it being the intent and purpose to agree to the use of said copies, but it being understood and agreed that all right of objection upon any other ground shall be and is hereby reserved, and that either party may offer copies certified as above of any other certificates or resolutions sent by any of said executives to the Secretary of State of the United States of America in relation to said alleged amendment, at any subsequent state of the proceedings in this Court.

36

(Signed)

W. L. MARBURY,

(Signed)

T. F. CADWALADER,

Attorneys for Petitioners.

(Signed)

LINDSAY C. SPENCER,

Attorney for Respondents."

"December —, 1920."

Messrs. Moses and Brady appearing as amici curiæ stated that there was no objection on their part to the stipulations.

The petitioners thereupon offered in evidence, over the objection of the respondents, the following parts of the Constitution of West Virginia, to wit, Article 6, Section 24, and Article 6, Section 12, which the respondent then moved to strike out and the motion was overruled.

The sections are as follows:

"Article 6, Section 24: A majority of the members elected to each House of the Legislature, shall constitute a quorum. But a smaller number may adjourn from day to day, and shall be authorized to compel the attendance of absent members, as each House may provide. Each House shall determine the rules of its proceedings and be the judge of the elections, returns and qualifications of its own members. The Senate shall choose, from its own body, a President; and the House of Delegates, from its own body, a Speaker. Each House shall appoint its own officers, and remove them at pleasure. The oldest delegate present shall call the House to order, at the opening of each new House of Delegates, and preside over it until the Speaker thereof shall have been chosen and have taken his seat. The oldest member of the Senate present at the commencement of each regular session thereof, shall call the Senate to order, and preside over the same until a President of the Senate shall have been chosen, and have taken his seat."

37 Article 6, Section 12: "No person shall be a Senator or Delegate who has not for one year next preceding his election, been a resident within the District or county from which he is elected; and if a Senator or Delegate remove from the District or county for which he was elected, his seat shall be thereby vacated."

The petitioners then offered, over the objection of the respondents, such parts of the Constitution of Tennessee as might at any stage of the proceedings be deemed relevant, to wit, Article 2, Section 32, as follows:

"Article II, Section 32. Amendment to Constitution of the United States: No convention or general assembly of this State shall act upon any amendment of the Constitution of the United States proposed by Congress to the several States; unless such convention or general assembly shall have been elected after such amendment is submitted."

And also Section 11:

"Section 11. Powers of Each House: Quorum: Adjournment from Day to Day: The Senate and House of Representatives, when assembled, shall each choose a Speaker and its other officers; be judges of qualification and election of its members, and sit upon its own adjournment from day to day. Not less than two-thirds of all the members to which each House shall be entitled shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may be authorized, by law, to compel the attendance of absent members."

Also Section 5 of Article II, showing that the House of Representatives of Tennessee cannot consist of more than 99 members. (See Sections 123 to 127, inclusive, of the Code of Tennessee of 1917, fixing the membership at 99.)

And also Section 12 of Article II of the Constitution of Tennessee by which each House of the Legislature is given the power to determine the rules of its own proceedings.

The above Sections were objected to by the respondents when offered and the objection overruled.

38 The petitioners also offered in evidence Article 2, Section 3, of the Constitution of Missouri, which is as follows:

"Article 2, Section 3: Local self-government not to be impaired.—That Missouri is a free and independent State, subject only to the Constitution of the United States; and as the preservation of the States and the maintenance of their governments are necessary to an indestructible union, and were intended to co-exist with it, the Legislature is not authorized to adopt, nor will the people of this State ever assent to any amendment or change of the Constitution of the United States which may in anywise impair the right of local self-government belonging to the people of this State."

This offer was objected to by the respondents and the objection overruled.

The petitioners also offered in evidence generally, over the objection of respondents, those parts of the Constitutions of those States which have gone through the form of ratifying the Nineteenth Amendment, so-called, or which are claimed to have gone through the form of ratifying that amendment, which provide the method of their own amendment, which method in each case requires among other things a ratification of the proposed amendment by vote of the qualified electors of such State.

The petitioners then offered in evidence the following transcript of the House Journals of the extraordinary session, Sixty-first General Assembly, State of Tennessee, relating to Senate Joint Resolution No. 1, relative to ratifying the Nineteenth Amendment to the Constitution of the United States.

Also bound therewith transcript of Senate Journals at the same session of the General Assembly relating to the same matter. Both transcripts were certified as prescribed by law for the proof of public acts and records of any state of a non-judicial nature in the courts of another state. (They were objected to by respondents as irrelevant but the objection was overruled.)

- 39 *Transcript of House Journals, Extraordinary Session, 61st General Assembly, State of Tennessee, on Senate Joint Resolution No. 1, Relative to Ratifying the 19th Amendment to the Constitution of the United States.*

Monday, August 9, 1920.

First Day.

The Governor having issued his proclamation convening the 61st General Assembly in Extraordinary Session.

The House met at the Capitol at 12.00 o'clock M. and was called to order by Mr. Speaker Walker.

The proceedings were opened with prayer by Rev. R. V. Cawthon.

Mr. Speaker Walker directed the Clerk to read the Proclamation of the Governor convening the General Assembly in Extraordinary Session which, on motion, was ordered spread on the Journal and is as follows:

Proclamation.

To the Members of the Sixty-first General Assembly of the State of Tennessee:

You are hereby called to meet in Extraordinary Session at the State Capitol in Nashville, Tennessee, at noon, on Monday, August 9, 1920, for the purpose of taking action upon the following subjects deemed of sufficient importance to require immediate attention, to wit:

1. To take action upon the amendment of the Constitution of the United States, proposed by the Congress, giving women full right of suffrage, being the proposed Nineteenth Amendment to the Federal Constitution.

* * * * *

Only matters of compelling urgency have been included in this call. It is less than five months until the Legislature will convene in regular session, at which time other matters, both general and special, which have been strongly urged upon me, can be taken up at a time when they may receive full consideration. The pledges made in the Democratic platform not hereinbefore specifically mentioned are in no sense ignored, but will be fully redeemed by the incoming Legislature.

In Testimony Whereof, I have hereunto set my hand and caused the great seal of the State to be affixed at the Capitol at Nashville, on Saturday, August 7, 1920.

A. H. ROBERTS,
Governor.

IKE B. STEVENS,
Secretary of State.

Tuesday, August 10, 1920.

Second Day.

The House met at 10.00 A. M. and was called to order by Mr. Speaker Walker.

The proceedings were opened with prayer by the Chaplain, Rev. R. V. Cawthon.

On a call of the roll 86 members were found to be present.

The absent members were: Messrs. Bell, Fitzhugh, Francisco, Green, Harris (of Wilson), Norvell, Swink, Wilson and Wolfenbarger, who were excused.

On motion the reading of the Journal was dispensed with.

41

Sworn In.

The following Representatives-elect presented their certificates and were duly sworn in by Mr. Speaker Walker:

Sullivan County, T. A. Dodson.

26th Floterial District:

Lauderdale and Tipton Counties, W. A. Shoaf, Jr.

9th District:

Bradley and Polk Counties, J. H. Simpson.

Introduction of Resolutions.

By the Shelby Delegation—House Joint Resolution No. 1—Relative to the 19th Amendment.

Under the rules the Resolution lies over.

Wednesday, August 11, 1920.

Third Day, Afternoon Session.

The House met at 2.00 P. M. and was called to order by Mr. Speaker Walker.

On motion the roll call was dispensed with.

Resolutions Lying Over.

House Joint Resolution No. 1—Relative to the 19th Amendment.

On motion of Mr. Riddick the Resolution was referred to the Committee on Constitution Convention and Amendments.

Monday, August 16, 1920.

Eighth Day.

The House met at 2:00 P. M. and was called to order by Mr. Speaker Walker.

The proceedings were opened with prayer by the Chaplain, Rev. R. V. Cawthon.

42 On a call of the roll 98 members were found to be present.

The absent member was Mr. Harris (of Wilson).

On motion the reading of the Journal was dispensed with.

Message from the Senate.

Mr. Speaker:

I am directed to transmit to the House, Senate Joint Resolution No. 4—Relative to the Nineteenth Amendment to the Constitution, adopted for concurrence.

CARTER,
Clerk.

Tuesday, August 17, 1920.

Ninth Day.

The House met at 10.30 A. M. and was called to order by Mr. Speaker Walker.

The proceedings were opened with prayer by the Chaplain, Rev. R. V. Cawthon.

On a call of the roll 96 members were found to be present.

The absent members were: Messrs. Brooks, Harris (of Wilson) and Rowan, who were excused.

On motion the reading of the Journal was dispensed with.

Reports from Standing Committees.

Committee on Constitutional Conventions and Amendments.

Mr. Speaker:

Your Committee on Constitutional Conventions and Amendments beg leave to report as follow:

(1) We have been shown the opinions of the Attorney General of Tennessee, the Solicitor General of the United States and
43 of numerous other lawyers all holding that Section 32 of Article 2 of the Constitution of Tennessee was abrogated before its enactment by the 5th Article of the United States Constitution and was never of any legal force and effect. This special provision of our Tennessee Constitution is the only limitation upon the power of the Legislature to pass the proposed resolution which has ever been suggested and as it is now out of the way, we report that the Legislature has the perfect right and the full power to adopt House Joint Resolution No. 1, ratifying the proposed 19th Federal Amendment, giving suffrage to women, if such is its desire.

(2) As to the wisdom and policy of ratifying the proposed 19th Amendment, in our opinion this is no longer an open question for

either Democrats or Republicans. Upon full consideration, the State and National Conventions of both Parties have made the ratification of this Amendment a vital part of the political creed of both the great parties. Accordingly, it seems to us to be the plain duty of all loyal Democrats and of all loyal Republicans to respect and obey the platform declarations of their respective Parties, and to enact them into law as soon as this can legally be accomplished.

(3) As to the claim that members of this Legislature violate their official oaths and stifle the voice of their consciences by voting for the proposed resolution, we recognize the fact that each man must of necessity be the guardian of his own conscience. However, speaking with full respect for our consciences, and with absolute regard for our official oaths, we feel that we are entirely free to support the proposed Resolution. We go further and unhesitatingly declare that as our official oaths require us to support the Constitution of the United States as well as that of Tennessee, we would be violating that oath if we refused to accord the former that supremacy, in case of conflict, to which it is entitled by its own express declaration upheld by repeated decisions of every Court, State and Federal, of this great Nation. That there is such a conflict was necessarily decided by the Supreme Court of the United States in the Noted Ohio Referendum case of *Hawk vs. Smith*, Secretary.

44 (4) To sum up what we have said: We report that, in our opinion, the members of this House have the perfect right and full power to pass House Joint Resolution No. 1 and that its passage is simply the performance of solemn platform promises made to the people of this State and the United States by both great parties and indeed by every other party.

Moreover, we take great pride in the fact that, to Tennessee has been accorded the signal distinction of passing a Resolution which will secure the final adoption of the 19th Federal Amendment, giving to our mothers, wives, daughters, sisters and sweethearts, a precious right which they have been so long unjustly denied.

We heartily recommend the adoption of House Joint Resolution No. 1 ratifying the 19th Federal Amendment giving suffrage to women.

T. K. RIDDICK,
JOS. HANOVER,
JOE HARRIS,
BROWN DAVIS,
R. W. BRATTON,
T. O. SIMPSON,
U. S. G. ELLIS,
JOE F. ODLE,
J. F. McMURRAY,
G. H. KEATON.

Resolutions Lying Over.

Senate Joint Resolution No. 1.—Relative to ratifying the 19th Amendment.

Pending consideration of the Resolution (Mr. Overton presiding) Mr. Walker's motion to adjourn until tomorrow at 10.00 a. m. prevailed by the following vote:

Ayes	52
Noes	44

Representatives voting aye were: Messrs. Bond, Boyd, Boyer, Bratton, Burn, Carter, Carr, Cassady, Check, Cole, Crawford (of Fayette), Dunlap, Francisco, Frogge, Gilbreath, Hall, Harville, Hayes, Hickman, Jackson, Keisling, Leath, Long, Martin (of Hamilton), McCalmann, McMurray, Millican, Montgomery, Moore, Norvell, Oldham, Overton, Phelan, Rucker, Russell, Sharpe, Sipes, Skidmore, Smith, Story, Swift, Travis (of Franklin), Turner, Vinson, Weldon, L. M. Whitaker, M. E. Whitaker, Whitfield, Wilson, Wolfenbarger, Womack and Mr. Speaker Walker—52.

Representatives voting no were: Messrs. Anderson, Bell, Brooks, Canale, Crawford (of Bedford), Davis, Dodson, Dowlen, Ellis, Fisher, Fitzhugh, Forsythe, Griffin, Hanover, Harris (of Knox), Howard, Jeter, Johnson, Kahn, Keaton, Larsen, Light, Longhurst, Luther, Lynn, Martin (of Washington), Miller, Morgan, Moose, Odle, Phillips (of Hawkins), Phillips (of Madison), Rector, Riddick, Shoaf, Simpson (of Bradley), Simpson (of Humphreys), Stovall, Swink, Tarrant, Thronesberry, Traves (of Henry), Tucker and Wade—44.

Wednesday, August 18, 1920.

Tenth Day.

The House met at 10.00 a. m. and was called to order by Mr. Speaker Walker.

The proceedings were opened with prayer by the Chaplain, Rev. E. V. Cawthon.

On a call of the roll 96 members were found to be present.

The absent members were: Messrs. Brooks, Harris (of Wilson) and Rowan, who were excused.

On motion the reading of the Journal was dispensed with.

Unfinished Business.

Senate Joint Resolution No. 1.—Relative to ratification of 19th Amendment.

Mr. Walker (Mr. Overton presiding) moved that the Resolution be tabled.

The motion failed for want of majority by the following vote:

Ayes	48
Noes	48

Representatives voting aye were: Messrs. Bond, Boyd, Boyer, Bratton, Burn, Carter, Cassady, Check, Cole, Crawford (of Fayette), Dunlap, Forsythe, Francisco, Frogge, Gilbreath, Hall,

Harville, Hayes, Jackson, Keisling, Long, Martin (of Hamilton), McMurray, Millican, Montgomery, Moore, Norvell, Oldham, Overton, Rucker, Russell, Sharpe, Sipes, Skidmore, Smith, Story, Swift, Thronesherry, Travis (of Franklin), Vinson, Weldon, L. M. Whitaker, M. E. Whitaker, Whitfield, Wilson, Wolfenbarger, Wonnack and Mr. Speaker Walker—48.

Representatives voting no were: Messrs. Anderson, Bell, Canale, Carr, Crawford (of Bedford), Davis, Dodson, Dowlen, Ellis, Fisher, Fitzhugh, Foster, Griflin, Hanover, Harris (of Knox), Hickman, Howard, Jeter, Johnson, Kahn, Keaton, Larsen, Leath, Light, Loughurst, Luther, Lynn, Martin (of Washington), McCalman, Miller, Morgan, Moose, Odle, Phelan, Phillips (of Hawkins), Phillips (of Madison), Rector, Riddick, Shoaf, Simpson (of Bradley), Simpson (of Humphreys), Stovall, Swing, Tarrant, Travis (of Henry), Tucker, Turner and Wade—48.

Thereupon the Resolution was concurred in by the following vote:

Ayes	50
Noes	46

Representatives voting aye were: Messrs. Anderson, Bell, Burn, Canale, Carr, Crawford (of Bedford), Davis, Dodson, Dowlen, Ellis, Fisher, Fitzhugh, Foster, Griflin, Hanover, Harris (of Knox), Hickman, Howard, Jeter, Johnson, Kahn, Keaton, Larsen, Leath, Light, Loughurst, Luther, Lynn, Martin (of Washington), McCalman, Miller, Morgan, Moose, Odle, Phelan, Phillips (of Hawkins), Phillips (of Madison), Rector, Riddick, Shoaf, Simpson (of Bradley), Simpson (of Humphreys), Stovall, Swink, Tarrant, Travis (of Henry), Tucker, Turner, Wade and Mr. Speaker Walker—50.

Representatives voting no were: Messrs. Bond, Boyd, Boyer, Bratton, Carter, Cassady, Check, Cole, Crawford (of Fayette), Dunlap, Forsythe, Francisco, Frogge, Gilbreath, Hall, Harville, Hayes, 47 Jackson, Keisling, Long, Martin (of Hamilton), McMurray, Millican, Montgomery, Moore, Norvell, Oldham, Overton, Rucker, Russell, Sharpe, Sipes, Skidmore, Smith, Story, Swift, Thronesherry, Travis (of Franklin), Vinson, Weldon, L. M. Whitaker, M. E. Whitaker, Whitfield, Wilson, Wolfenbarger and Wonnack—46.

Explanations.

The following explanation was made by Mr. Cassady:

Explanation by J. E. Cassady, Joint Representative of Knox and Loudon Counties, of his vote on Resolution ratifying the 19th Amendment to the Constitution:

Mr. Cassady said:

"Mr. Speaker:

It is my opinion that Article 2, Section 32, Tennessee Constitution, precludes me from voting for the ratifying the proposed 19th Amendment of our Federal Constitution. The two Constitutions, Federal and State, do no conflict, but construed together, under the rules of law required in construing two or more instruments together, so that they should both be maintained and preserved, if possible, that neither shall give way to the other, if both can be followed, and this question, as I see it, should be passed until the meeting of the Legislature, to be elected in November, 1920.

If this view were out of the way, I doubt the wisdom of the proposed Amendment. I am unwilling to place the burden, resulting from the ratification of this Amendment, upon the women of the country—paying poll tax, working on public roads, going to war, fighting side by side with men, which this Amendment carries. All such burdens I am unwilling to place on the women of the State, and all this must follow ratification.

Aside from this, ratification means to double the political power of the city and in proportion, lessen the political power of the country. Being from the country, as I am, I shall stand for the country people, where they go I follow, their people are my people,

their God my God, and now being forced to vote I vote No,
48 if I perish, I perish.

J. E. CASSADY."

The following explanation was offered by Mr. Hall.

(1) I am of opinion that under the Constitution of Tennessee, the present Legislature has no right or authority to act upon said amendment in any way. I see no conflict between our Constitution and that of the Federal Constitution, and so believing, I feel it my duty to maintain inviolate the oath I took to support the Constitution of our own State.

(2) But as the ratification of said amendment is treated as properly before this House for consideration, I vote for its rejection. I am of opinion that the question of suffrage should be dealt with solely by the States and not by way of Federal Amendment. I am unwilling to become a party to a measure that will impose woman suffrage upon other States that have emphatically decided that they do not want it; and further, I refuse to endorse a measure that will deprive the States of this Union of the right to regulate their own internal affairs, as will result from the adoption of the Nineteenth Amendment.

(3) I am convinced that a majority of the good women of Tennessee are against woman suffrage, and will resent the conferring of this privilege and duty against their wills.

(4) Lastly, I cannot give my approval to a resolution that will radically change our form of government and our own Constitu-

tion and that of the Federal Government, and bring about amendments to both instruments, without an opportunity of ascertaining the will of the people.

For the reasons above stated I vote No on this Resolution, the 19th Amendment.

F. S. HALL.

Mr. Walker (Mr. Overton presiding) changed his vote from "No" to "Aye" and entered a motion on the Journal to reconsider.

49

Saturday, August 21, 1920.

Thirteenth Day.

The House met at 10:00 A. M. and was called to order by Mr. Speaker Walker.

The proceedings were opened with prayer by the Chaplain, Rev. R. V. Cawthon.

Mr. Riddick moved that the call of the roll be dispensed with. The motion prevailed.

On motion the reading of the Journal was dispensed with.

Mr. Montgomery made the point of order that no quorum was present and demanded a roll call.

On a call of the roll the following members were found to be present:—Messrs. Anderson, Bell, Bond, Brooks, Burn, Canale, Carr, Cassady, Crawford (of Bedford), Davis, Dodson, Dowlen, Ellis, Fisher, Fitzhugh, Forsythe, Foster, Frogge, Griffin, Hanover, Harris (of Knox), Hickman, Howard, Jeter, Johnson, Kahn, Keaton, Larsen, Leath, Light, Longhurst, Luther, Lynn, Martin (of Washington), Martin (of Hamilton), McCalman, Miller, Montgomery, Morgan, Moose, Odle, Phelan, Phillips (of Hawkins), Phillips (of Madison), Rector, Riddick, Shoaf, Simpson (of Bradley), Simpson (of Humphreys), Stovall, Swink, Tarrant, Thornesberry, Travis (of Henry), Tucker, Turner, Wade and Mr. Speaker Walker—59.

Mr. Odle moved that the Speaker prepare a list of the absentees and give same to the Sergeant-at-Arms with the request that he go out and arrest any and all absent members and bring them into the House.

Before the motion was put Mr. Speaker Walker announced under the rules of the House such action on his part was necessary and instructed the Sergeant-at-Arms to secure a list of the absent members and if possible bring the members to the House.

On motion of Mr. Riddick at 10:30 A. M. the House recessed for one hour.

50

At the expiration of the recess the House was called to order by Mr. Speaker Walker.

Expunged by Order of the House Tuesday, August 31, 1920.

Mr. Riddick offered the following written motion:

Mr. Speaker: I call from the Journal the motion to reconsider Senate Joint Resolution No. 1.

Mr. Speaker Walker ruled the motion out of order for the following reasons:

1st. Because the roll call shows no quorum present.

Section 11 of Article II of the Constitution of the State provides in part: "Not less than two-thirds of all the members to which each House shall be entitled shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized by law to compel the attendance of absent members."

2nd. Because the Attorney-General of the State has held that it was only necessary for a majority of the members present constituting a quorum to ratify the 19th Amendment. If it requires a quorum to pass on the question of ratification, certain it is that a quorum must be present to reconsider.

3rd. State of Tennessee.

To A. H. Roberts, Governor of the State of Tennessee; Ike B. Stevens, Secretary of State of the State of Tennessee; A. L. Todd, Speaker of the Senate of the General Assembly of the State of Tennessee; Seth Walker, Speaker of the House of Representatives of the State of Tennessee, and Their Counselors, Attorneys, Solicitors and Agents, and Each and Every One of Them, Greeting:

Whereas, in a certain suit instituted in Part 2 of our Court of Chancery at Nashville, by C. Runcie Clements, Rufus E. Fort, Edward Buford, Dudley Gale, James A. Yowell, A. S. Warren and

George Washington, complainants, against A. H. Roberts, 51 Ike B. Stevens, A. L. Todd and Seth Walker, defendants, the complainants having obtained from Honorable E. G. Langford, a fiat for a writ of injunction to enjoin defendants A. H. Roberts, Governor of the State of Tennessee, Ike B. Stevens, Secretary of State, A. L. Todd, Speaker of the Senate of the General Assembly of the State of Tennessee, and Seth Walker, Speaker of the House of Representatives of the General Assembly of the State of Tennessee, and each of them, from making, signing or issuing any proclamation, declaration, resolution or certificate, declaring that the State of Tennessee has constitutionally and legally adopted the proposed Nineteenth Amendment to the Constitution of the United States, and from taking any official action, with reference to the illegal action of the special session of the General Assembly of the State of Tennessee purporting to ratify and adopt said Nineteenth Amendment to the Constitution of the United States; and

The complainants having executed the bond required by the said fiat;

We, therefore, in consideration of the premises aforesaid do strictly enjoin and command you, the said A. H. Roberts, Ike B. Stevens, A. L. Todd and Seth Walker, in their official capacities—set forth above, and all and every person before mentioned, under the penalty prescribed by law, of your and every of your goods, lands, tenements, to be levied to our use, and that you and every of you do absolutely desist from doing any of the things above forbidden, restrained and enjoined—until hearing of this cause in our said Courts of Chancery.

Witness, Joseph R. West, Clerk and Master of our said Court, at office, the first Monday in April, in the year of our Lord, 1920, and in the 144th year of our Independence.

(Signed)

JOSEPH R. WEST,

Clerk and Master,

By C. H. SWANN,

Deputy Clerk and Master.

52 Expunged by order of the House Tuesday, August 31, 1920.

Mr. Riddick appealed from the decision of the Chair.

The Chair (Mr. Odle presiding) stated that the question was whether or not the Chair should be sustained in its ruling.

On a call of the roll of the House refused to sustain the decision of the Chair by the following vote:

Ayes	8
Noes	49
Present and not voting	1

Representatives voting Aye were:—Messrs. Bond, Boyer, Cassidy, Forsythe, Frogge, Martin (of Hamilton), Montgomery and Thronesberry—8.

Expunged by order of the House Tuesday, August 31, 1920.

Representatives voting No were:—Messrs. Anderson, Bell, Brooks, Burn, Canale, Carr, Crawford (of Bedford), Davis, Dodson, Dowlen, Ellis, Fisher, Fitzhugh, Foster, Griffin, Hanover, Harris (of Knox), Hickman, Howard, Jeter, Johnson, Kahn, Keaton, Larsen, Leath, Light, Longhurst, Luther, Lynn, Martin (of Washington), McCalman, Miller, Morgan, Moose, Odle, Phelan, Phillips (of Hawkins), Phillips (of Madison), Rector, Riddick, Shoaf, Simpson (of Bradley), Simpson (of Humphrey), Stovall, Swink, Tarrant, Travis (of Henry), Tucker and Wade—49.

The representative present and not voting was Mr. Speaker Walker—1.

Mr. Riddick offered the following written motion:

Mr. Speaker:

I move you that the House now reconsider its action in concurring in the adoption of Senate Joint Resolution No. 1.

53 Mr. Walker (Mr. Odle presiding) made the point of order that no quorum was present and demanded a roll call.

The Chair (Mr. Odle presiding) stated that he would first have a roll call on Mr. Riddick's motion and after that was disposed of would order a roll call on the demand of Mr. Walker that a quorum was not present.

Mr. Walker again demanded a roll call on the point of order that no quorum was present.

The Chair (Mr. Odle presiding) stated that there was a motion before the House and that a roll call on Mr. Walker's demand that no quorum was present would be ordered immediately after the motion of Mr. Riddick was disposed of.

Expunged by order of the House Tuesday, August 31, 1920.

Thereupon the motion of Mr. Riddick that the House reconsider its action in concurring in and adopting Senate Joint Resolution No. 1 failed by the following vote:

Ayes	0
Noes	49
Present and not voting	9

Representatives voting no were: Messrs. Anderson, Bell, Brooks, Burn, Canale, Crawford (of Bedford), Davis, Dodson, Dowlen, Ellis, Fisher, Fitzhugh, Foster, Griffin, Hanover, Harris (of Knox), Hickman, Howard, Jeter, Johnson, Kahn, Keaton, Larsen, Leath, Light, Longhurst, Luther, Lynn, Martin (of Washington), McCallman, Miller, Morgan, Moose, Odle, Phelan, Phillips (of Hawkins), Phillips (of Madison), Rector, Riddick, Shoaf, Simpson (of Bradley), Simpson (of Humphreys), Stovall, Swink, Tarrant, Travis (of Henry), Tucker, Turner and Wade—49.

Representatives present and not voting were: Messrs. Bond, Boyer, Cassidy, Forsythe, Frogge, Martin (of Hamilton), Montgomery, Thronesherry and Mr. Speaker Walker—9.

54 Mr. Walker (Mr. Odle presiding) made the point of order that Mr. Odle was only acting as Speaker by his request and was therefore enjoined from putting any motion before the House.

Expunged by order of the House Tuesday, August 31, 1920.

Mr. Riddick offered the following written motion:

Mr. Speaker: I move you that the Clerk of this House, be, and he is hereby instructed to transmit to the Senate through the ordinary procedure Senate Joint Resolution No. 1.

On a vive voce vote the Chair (Mr. Odle presiding) declared the motion carried.

On motion of Mr. Riddick the House adjourned until 3:00 P. M. Monday.

Tuesday, August 31, 1920.

Twenty-Third Day.

The House met at 10:30 A. M. and in the absence of Mr. Speaker Walker was called to order by Chief Clerk Green.

The proceedings were opened with prayer by the Chaplain, Rev. R. V. Cawthon.

On a call of the roll 48 members were found to be present.

The absent members were: Messrs. Bell, Boyd, Boyer, Bratton, Canale, Carter, Cassady, Cheek, Cole, Crawford (of Fayette), Davis, Dunlap, Forsythe, Francisco, Frogge, Gillbreath, Hall, Harris (of Wilson), Harville, Hayes, Howard, Jackson, Keisling, Long, Luther, Martin (of Washington), McCalman, McMurray, Miller, Millican, Moore, Norvell, Oldham, Rowan, Rucker, Sharpe, Sipes, Skidmore, Smith, Story, Swift, Travis (of Franklin), Vinson, Weldon, L. M. Whitaker, M. E. Whitaker, Whitfield, Wilson, Wolfenbarger, Womack and Mr. Speaker Walker—51.

55 On motion of Mr. Keaton the House stood at ease until 2:00 P. M. today.

At the hour of 2:00 P. M. the House was called to order by Mr. Speaker Walker.

On a call of the roll 91 members were found to be present.

The absent members were: Messrs. Canale, Davis, Harris (of Wilson), Luther, Martin (of Washington), Miller, Rowan and Sipes.

On motion the reading of the Journal was dispensed with.

Mr. Hall offered the following written motion:

Mr. Speaker: I move that each and every motion and proceeding appearing on pages 237, 238, 239, 240, 241, 242 of the Journal of the Lower House of Tennessee of the 61st General Assembly in extraordinary session assembled had on August 21, 1920, save and except the roll call showing no quorum to be present and the points of order made and the rulings thereon be expunged from the Journal.

Mr. Riddick made the following points of order:

Mr. Speaker: I rise to a parliamentary inquiry and ask: Is a motion in order which proposes to reconsider Senate Joint Resolution No. 1, which was concurred in and adopted by the House of Representatives on Wednesday, August 18, 1920, by a vote of 50 for and 46 against? I make the point of order that the action of this House in concurring in and adopting said Resolution cannot now be reconsidered, because:

1. By the concurrence in and adoption of said Joint Resolution the proposed Amendment to the Constitution of the United States therein embodied, was ratified by the State of Tennessee and the power and authority of this House over said Resolution was ipso facto terminated.

2. The Legislature of Tennessee derives its power to act upon a proposed amendment to the Constitution of the United States from that Constitution, Article V thereof, and from that only.

56 So when a Legislature of a State ratifies a proposed amendment to said Constitution, its action is final, and this power so given by the Constitution of the United States cannot be restricted, modified or enlarged, and no Legislature can, nor can this House of Representatives, provide any rule of procedure, or rule of action which will or can in any manner rescind, reconsider or affect the action of the Legislature after a proposed constitutional amendment has been ratified.

3. In acting upon, concurring in and adopting said resolution this Legislature was engaged not in a legislative act, but was performing a political act and duty for the State of Tennessee, and the rules of this House cannot be applied to, or in any manner govern or control the action of this body in acting upon a proposed amendment to the Constitution of the United States.

4. Rule 31 under which it is sought to maintain or bring forward the proposed motion to reconsider is applicable to questions of legislation only and not political questions, and this appears from the rule itself. This body is without power to make a rule which can affect or control in any way the action of this House in acting upon a proposed amendment to the Constitution of the United States.

5. This House of Representatives, by the concurrence in and adoption of said Joint Resolution, ratified said proposed amendment to the Constitution of the United States for the State of Tennessee and this body is without power or authority to rescind, reconsider or repudiate the affirmative action it has taken.

6. This House has already, on Saturday, August 21, 1920, by a vote of 50 to nothing, refused to reconsider its action concurring in Senate Joint Resolution No. 1, and directed that said Resolution be returned to the Clerk of the Senate, which was accordingly done. Having parted with the possession of said Resolution, the same is

now beyond its control, and no action the House could take would affect it in any way whatsoever.

7. In adopting the motion to concur in Senate Joint Resolution No. 1, this House was not legislating, but helping to cast the vote of Tennessee on the Nineteenth Federal Amendment giving suffrage to women, and that vote having now been cast, counted, and the result announced, Tennessee can vote no more.

Mr. Speaker Walker overruled the points of order stating that at present they were premature.

Mr. Odle made the following points of order:

I make the point of order that this House cannot now consider Senate Joint Resolution No. 1, ratifying the Nineteenth Amendment to the Constitution of the United States—Because—

1. Said Joint Resolution is not in the actual possession of this House, and the Clerk of the House cannot produce it for any action thereon.

2. Under Rule 31, the Resolution passed to the Senate when the time in which it could be reconsidered had elapsed.

3. The House by a vote of fifty members declined to reconsider said Resolution and directed the Clerk of this House to transmit it as concurred in, to the Senate.

4. Said Joint Resolution is not the exercise of a legislative but of a political function and when passed cannot be reconsidered.

Mr. Speaker Walker overruled the points of order stating that at present they were premature.

Thereupon the motion of Mr. Hall prevailed by the following vote:

Ayes	47
Noes	37
Present not voting.....	6

Representatives voting Aye were: Messrs. Bond, Boyd, Boyer, Bratton, Carter, Cassidy, Cheek, Cole, Crawford (of Bedford), Crawford (of Fayette), Dunlap, Forsythe, Francisco, Grogge, Gilbreath, Hall, Harville, Hayes, Jackson, Keisling, Long, Martin (of Hamilton), McMurray, Millican Montgomery Moore, Norvell Oldham, Overton, Rucker, Russell, Sharpe, Skidmore, Smith, Story, Swift, Thornesberry, Travis (of Franklin), Vinson, Weldon, L. M. Whitaker, M. E. Whitaker, Whitfield, Wilson, Wolfenbarger, Womack and Mr. Speaker Walker—47.

Representatives voting No were: Messrs. Brooks, Burn, Carr, Dedson, Dowlen, Ellis, Fisher, Fitzhugh, Foster, Griffin, Hanover, Hickman, Jeter, Keaton, Larsen, Leath, Light, Longhurst, Lynn, McCalman, Morgan, Moose, Odle, Phelan, Phillips (of Madison), Reector, Riddick, Shoaf, Simpson (of Bradley), Simpson (of Humphre

reys), Stovall, Swink, Tarrant, Travis (of Henry), Tucker, Turner and Wade—37.

Representatives present and not voting: Messrs. Anderson, Bell, Harris (of Knox), Johnson, Kahn and Phillips (of Hawkins)—6.

Explanations.

My reason for answering present and not voting is—that we may get rid of this question and get down to business and finish up some needed legislation which cannot be done while this question is still in the shape it is. I am satisfied the Amendment has been passed and settled and further action by this body will avail nothing.

JOE HARRIS.

Explanation of Present and Not Voting—Ernest S. Bell.

Mr. Speaker: I am not voting for the reason that I believe the matter is beyond the jurisdiction of this body. The Secretary of State has issued his proclamation declaring that Tennessee has ratified the 19th Amendment; that it is now a part of the Federal Constitution and is the supreme law of the land. Therefore, I do not believe that this body has a right to act further on the matter. For that reason I refuse to vote or participate in further action.

ERNEST S. BELL.

Mr. Hall moved that Senat- Joint Resolution No. 1 be supplied and that the supplied copy be spread upon the Journal.

59 The motion prevailed and the Resolution is as follows:

Senate Joint Resolution No. 1.

"A Joint Resolution ratifying a proposed Amendment to the Constitution of the United States, providing that the right of citizens of the United States to vote, shall not be denied or abridged by the United States or by any State on account of sex, and providing further that Congress shall have power to enforce this article by appropriate legislation.

"Whereas, Both Houses of the Sixty-sixth Congress of the United States of America, at its first session, by a constitutional majority of two-thirds thereof, passed a resolution submitting to the several States a proposition to amend the Constitution of the United States, a certified copy of which has been received by the Governor of the State of Tennessee, from the Secretary of State of the United States, as required by law, and by him transmitted to the General Assembly, the same being in the following words, to wit:

"Sixty-sixth Congress of the United States of America, at the first session, begun and held at the City of Washington, on Monday, the Nineteenth day of May, One Thousand Nine Hundred and Nineteen.

"Joint Resolution proposing an amendment to the Constitution extending the right of suffrage to women.

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), that the following Article is proposed as an amendment to the Constitution, which shall be valid to all intents and purposes as a part of the Constitution when ratified by the legislatures of three-fourths of the several States,

Article —.

"The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

60 "Congress shall have power to enforce this Article by appropriate legislation."

F. H. GILLETTE,

Speaker of the House of Representatives,

THOS. R. MARSHALL,

Vice-President of the United States and President of Senate.

"Be it resolved by the Senate of the State of Tennessee, the House of Representatives concurring. That said proposed amendment to the Constitution of the United States of America, be and the same is hereby ratified by the General Assembly of the State of Tennessee.

"Be it further resolved, That certified copies of the foregoing preamble and joint resolution be forwarded by the Governor of the State of Tennessee to the President of the United States, to the Secretary of State of the United States at Washington, District of Columbia, to the President of the Senate of the United States, and the Speaker of the House of Representatives of the United States."

Mr. Hall called up the motion to reconsider Senate Joint Resolution No. 1.

Mr. Riddick moved his point of order already made.

Mr. Speaker Walker overruled the points of order.

Mr. Odle made the following point of order:

That the proposed supply of copy of Senate Joint Resolution No. 1 does not show that it is a true and perfect copy of said Resolution and is not certified to.

2. That a Resolution cannot be supplied and acted upon but the original must be in the actual possession of the House or no action can be taken.

Mr. Speaker Walker overruled the point of order.

Thereupon, Mr. Hall's motion prevailed.

Mr. Hall moved that the House reconsider its action in concurring in Senate Joint Resolution No. 1.

61 The motion prevailed.

Mr. Hall moved that the House non-concur in Senate Joint Resolution No. 1.

The motion prevailed and the House non-concurred in Senate Joint Resolution No. 1 by the following vote:

Ayes	47
Noes	24
Present and not voting	20

Representatives voting Aye were:—Messrs. Bond, Boyd, Boyer, Bratton, Carter, Cassady, Cheek, Cole, Crawford (of Bedford), Crawford (of Fayette), Dunlap, Forsythe, Francisco, Frogge, Gilbreath, Hall, Harville, Hayes, Jackson, Keisling, Long, Martin (of Hamilton), McMurray, Millican, Montgomery, Moore, Norvell, Oldham, Overton, Rucker, Russell, Sharpe, Skidmore, Smith, Story, Swift, Thronesberry, Travis (of Franklin), Vinson, Weldon, L. M. Whitaker, M. E. Whitaker, Whitfield, Wilson, Wolfenbarger, Wonnack and Mr. Speaker Walker—47.

Representatives voting No were:—Messrs. Brooks, Burn, Carr, Dodson, Foster, Hanover, Johnson, Keaton, Larsen, Light, Lynn, Morgan, Odle, Phillips (of Madison), Rector, Riddick, Shoaf, Simpson (of Bradley), Simpson (of Humphreys), Stovall, Swink, Tarrant, Tucker and Wade—24.

Representatives present and not voting were:—Messrs. Anderson, Bell, Dowlan, Ellis, Fisher, Fitzhugh, Griffin, Harris (of Knox), Hickman, Howard, Jeter, Kahn, Leath, Longhurst, McCalman, Moose, Phelan, Phillips (of Hawkins), Travis (of Henry) and Turner—20.

The following explanation was offered by Mr. Crawford (of Bedford).

Mr. Speaker:

I herewith hand to the Clerk of the House petitions signed by approximately two thousand citizens of my county requesting me to change my vote on the reconsideration of the 19th Amendment and on the ground that the overwhelming majority of my people which I represent are against this Amendment.

I voted for this Amendment originally because it was recommended both by National and State Democratic Conventions and I was voting in accordance with what I deemed the will of my constituents, however, I find that the majority of my constituents in accordance with the above mentioned petitions are opposed to this Amendment.

This is the sole reason for the change of my vote. I desire that this explanation be spread upon the Journal of the House.

J. S. CRAWFORD.

The following explanation was offered by Mr. Howard:

The Amendment has been heretofore voted upon carried by a constitutional majority, certified by the Governor and proclamation certified by Secretary of State and in my opinion is the law of the land and I therefore decline to vote upon the question further.

The following explanation was offered by Mr. W. W. Phillips:

Because I consider that the 19th Amendment has been legally adopted and that any other action on it by this House would be a farce, I desire to be recorded as present and not voting.

Mr. Raddick offered the following protest:

I protest, challenge and deny the right and power of the House of Representatives to reconsider the vote by which the Resolution ratifying the Nineteenth Federal Amendment was adopted.

The Federal Constitution gives to the members of the two Houses of the various State legislatures the power to cast the vote of their States upon the question whether it will ratify any proposed amendment. Like every other voting power, it can be exercised only once in the same election. In passing on last Wednesday the resolution to ratify we were not legislating, we were casting the vote of Tennessee on this question. Tennessee having voted once can vote no more.

63 The power to ratify is not a legislative function, but is a political power, and when once exercised the power is exhausted. In this respect it is exactly like the power of the citizen to vote or the power of the two Houses of the Legislature to elect their officers or certain State officials, like Comptroller, Treasurer, etc. These political powers when once exercised are no longer existent. No one ever heard of a motion to reconsider the election of a Speaker or of a United States Senator. This can no more be done than can the voter reconsider and recall his vote at the polls after it is cast and counted.

I insist that the power to ratify an amendment to a Federal Constitution is precisely like the political power of a citizen to cast his vote or of a legislature to elect officers, and when once exercised is forever ended so far as that election is concerned.

I therefore deny the power of this House to reconsider or change in any respect its action on this resolution at a former day of this session, and respectfully insist that any attempt to do so would be nugatory and void.

I also protest, challenge and deny the power of this House of Representatives to now take any action whatsoever upon Senate Joint Resolution No. 1, upon the ground that it has already refused to reconsider its action concurring in said resolution, and the Clerk of the House, as required by the rules and by special direction of the House, has returned Senate Joint Resolution No. 1 to the Senate. Having thus parted with the possession of said Joint Resolution No. 1, it is now entirely beyond the jurisdiction and control of this House and any action it might attempt to take concerning same would be absolutely nugatory and void.

T. K. RIDDICK.

Mr. Hall moved that the Clerk of the House be and is hereby instructed to notify the Senate that the House had reconsidered its action on Senate Joint Resolution No. 1—Relative to ratifying the 19th Amendment and had non-concurred in the Resolution, which motion prevailed.

64 Thursday, September 2, 1920.

Twenty-fifth Day.

The House met at 10.30 A. M. and was called to order by Mr. Speaker Walker.

The proceedings were opened with prayer by the Chaplain, Rev. R. V. Cawthon.

On a call of the roll 86 members were found to be present.

The absent members were: Messrs. Canale, Crawford (of Bedford), Davis, Harris (of Wilson), Luther, Lynn, Martin (of Washington), Miller, Phillips (of Madison), Rowan, Travis (of Franklin), M. E. Whitaker and Wilson, who were excused.

On motion the reading of the Journal was dispensed with.

Message from the Senate.

Mr. Speaker: I am directed to return House message, hereto attached, relative to Senate Joint Resolution No. 1—Relative to the ratifying the 19th Amendment to the Constitution of the United States, upon the following motion:

Mr. Hall moved that the message be returned to the House for the reason that the whole question was out of the hands of the Senate and the Senate has no jurisdiction.

CARTER, *Clerk*.

Mr. Hall moved that the House return the message to the Senate.

The motion prevailed by the following vote:

Ayes	43
Noes	29
Present and not voting	8

Representatives voting aye were: Messrs. Bond, Boyd, Boyer, Bratton, Carter, Carr, Cassady, Check, Cole, Crawford (of Fayette), Dunlap, Forsythe, Francisco, Frogge, Gilbreath, Hall, Harville, Hayes, Jackson, Keisling, Long, McMurray, Millican, Montgomery, Moore, Norvell, Oldham, Overton, Rucker, Russell, Sharpe, Sipes, Skidmore, Smith, Swift, Thronesherry, Vinson, Weldon, L. M. Whitaker, Whitfield, Wolfenbarger, Womack and Mr. Speaker Walker—43.

Representatives voting no were: Messrs. Bell, Burn, Dodson, Down, Fisher, Fitzhugh, Foster, Griffin, Hanover, Howard, Jeter, Kahn, Keaton, Larsen, Light, Longhurst, Lynn, McCalman, Morgan, Moose, Odle, Phelan, Riddick, Simpson (of Humphreys), Stovall, Swink, Travis (of Henry), Tucker and Wade—29.

Representatives present and not voting were: Messrs. Anderson, Brooks, Ellis, Harris (of Knox), Johnson, Leath, Rector and Simpson (of Bradley)—8.

Mr. Hall offered the following written motion:

Mr. Speaker—I move that a Committee of three be appointed by the Speaker of the House to secure sworn Transcripts of the Journals of both Houses relative to the non-concurrence by the House in Senate Joint Resolution No. 1, and that the Committee furnish same to the Governor with the request from the House that he certify the action of the House to the Secretary of State of the United States.

The motion prevailed by the following vote:

Ayes	43
Noes	30
Present and not voting.....	1

Representatives voting aye were: Messrs. Bond, Boyd, Boyer, Bratton, Carter, Carr, Cassady, Cheek, Crawford (of Fayette), Dunlap, Forsythe, Francisco, Frogge, Gilbreath, Hall, Harville, Hayes, Jackson, Keisling, Long, McMurray, Millican, Montgomery, Moore, Norvell, Oldham, Overton, Rucker, Russell, Sharpe, Sipes, Skidmore, Smith, Story, Swift, Thronesherry, Vinson, Weldon, L. M. Whitaker, Whitfield, Wolfenbarger, Womack and Mr. Speaker Walker—43.

Representatives voting no were: Messrs. Burn, Dodson, Dowlen, Ellis, Fisher, Fitzhugh, Foster, Griffin, Hanover, Harris (of 66 Knox), Hickman, Howard, Jeter, Johnson, Kahn, Keaton, Larsen, Leath, Light, Lynn, McCalman, Moose, Morgan, Odle, Phelan, Phillips (of Madison), Riddick, Shoaf, Simpson (of Bradley), Simpson (of Humphreys), Stovall, Swink, Travis (of Henry), Tucker, Turner, Wade—36.

Representative present but not voting was: Mr. Rucker—1.

Appointments.

Mr. Speaker Walker announced the appointment of Messrs. Bond, Hall and Dunlap as a Committee under Mr. Hall's motion to secure Transcript of the Journal relative to the 19th Amendment.

Saturday, September 4, 1920.

Twenty-seventh Day.

The House met at 10.00 A. M. and was called to order by Mr. Speaker Walker.

The proceedings were opened with prayer by the Chaplain, Rev. R. V. Cawthon.

On motion the roll call was dispensed with.

On motion the reading of the Journal was dispensed with.

Mr. Riddick offered the following written motion:

I move that this House determine and declare that the motion to expunge certain resolutions and orders relating to the Nineteenth Federal Amendment, the motion to reconsider Senate Joint Resolution No. 1, and the motion to non-concur therein, all made on Tuesday, August 31, 1920, were never legally adopted, because:

1. The rules of the House require that a motion to expunge must be carried by a two-thirds majority of the members present, or a majority of the entire membership of the House, where no previous notice of said motion has been given; and no such majority was obtained for the motion to expunge, as the Journal shows.

67 2. The motions to reconsider Senate Joint Resolution No. 1 and non-concur therein, could not lawfully be entertained unless and until a motion to expunge or rescind inconsistent motions adopted by the House of Saturday, August 21, 1920, had been legally adopted, which was never done.

Mr. Walker (Mr. Smith presiding) made the point of order that the motion was out of order for the reason that it should have been offered at the time the motion to expunge was adopted by the House.

The Chair (Mr. Smith presiding) ruled the point of order well taken.

Mr. Riddick appealed from the decision of the Chair.

Mr. Speaker Walker assumed the Chair, stating that the question was whether or not the Chair should be sustained.

On a call of the roll the Chair was sustained by the following vote:

Ayes	38
Noes	33
Present and not voting.....	2

Representatives voting aye were: Messrs. Boyd, Bratton, Carter, Cassidy, Crawford (of Bedford), Crawford (of Fayette), Dunlap, Forsythe, Francisco, Frogge, Gilbreath, Hall, Harville, Hayes, Jackson, Keisling, Long, McMurray, Millican, Montgomery, Moore, Oldham, Overton, Rucker, Russell, Sharpe, Sipes, Skidmore, Smith, Story, Swift, Thronberry, Vinson, Weldon, L. M. Whitaker, Whitfield, Wolfenbarger and Mr. Speaker Walker—38.

Representatives voting no were: Messrs. Bell, Burn, Dodson, Dowlen, Ellis, Fisher, Fitzhugh, Foster, Griffin, Howard, Jeter, Kahn, Keaton, Larsen, Leath, Light, Longhurst, Luther, Lynn, McCalman, Moose, Odle, Phelan, Phillips (of Madison), Riddick, Shoaf, Simpson (of Humphreys), Stovall, Swink, Travis (of Henry), Tucker, Turner and Wade—33.

68 Representatives present and not voting were. Messrs. Anderson and Phillips (of Hawkins)—2.

Mr. Riddick offered a paper which he read and asked to be spread on the Journal as an explanation and protest of his vote.

Mr. Hall made the point of order that the paper read by Mr. Rid-

dick was not an explanation but a legal argument and therefore could not be spread upon the Journal.

Mr. Speaker Walker stated that this was a question entirely with the House.

On motion the House refused to spread the paper of Mr. Riddick on the Journal by the following vote:

Ayes	37
Noes	38
Present and not voting.....	2

Representatives voting aye were: Messrs. Anderson, Bell, Burn, Carr, Crawford (of Bedford), Dodson, Dowlen, Ellis, Fisher, Fitzhugh, Foster, Griffin, Howard, Jeter, Kahn, Keaton, Larsen, Leath, Light, Longhurst, Luther, Lynn, McCalman, Moose, Odle, Phelan, Phillips (of Madison), Rector, Riddick, Shoaf, Simpson (of Humphreys), Stovall, Swink, Travis (of Henry), Tucker, Turner and Wade—37.

Representatives voting no were: Messrs. Bond, Boyd, Bratton, Carter, Cassady, Cole, Crawford (of Fayette), Dunlap, Forsythe, Francisco, Frogge, Gilbreath, Hall, Harville, Hayes, Jackson, Keisling, Long, McMurray, Millican, Montgomery, Moore, Oldham, Overton, Rucker, Sharpe, Sipes, Skidmore, Smith, Story, Swift, Thronesberry, Vinson, Weldon, L. M. Whitaker, Whitfield, Wolfenbarger and Mr. Speaker Walker—38.

Representatives present and not voting were: Messrs. Phillips (of Hawkins) and Russell—2.

Explanations.

My reason for not voting is because I think there is enough on the Journal already and I have said I would vote no more on this subject
PHILLIPS (OF HAWKINS).

69 31. When a question has been made and carried in the affirmative or negative, it shall be in order for any member voting with the prevailing side to move for a reconsideration thereof at any time the same day or the two next succeeding days of actual session; and no motion to reconsider a reconsideration shall be in order. The clerk shall transmit to the Senate no bill, resolution, message, report, amendment or motion, nor shall the Committee on Enrolled Bills present any bill or resolution to the Governor for his action, until the time for moving a reconsideration shall have expired, unless otherwise expressly ordered by the House.

STATE OF TENNESSEE,

County of Davidson:

I, J. D. Green, do hereby certify that I am and was prior to and during the Special Session of the General Assembly of the State of Tennessee, held at the Capitol at Nashville, beginning the 9th day of August, 1920, the Clerk of the House of Representatives of said Gen-

eral Assembly; that it was my duty as such Clerk to keep the Journals showing the official action taken by said House in all matters; that the extracts hereinbefore set forth purporting to be made from the Journals of said House of Representatives, are true and perfect copies of the entries made and appearing upon said Journals; that said entries show all the proceedings had in said House with respect to the proposed adoption of the so-called Suffrage Amendment, or Nineteenth Amendment, to the Constitution of the United States; and I further certify that the foregoing is a true and perfect copy of House Rule No. 31, dealing with consideration, etc., as the same appears among the Rules of said House of Representatives which were in force prior to, and during, said Special Session of the General Assembly of the State of Tennessee, and which are hereto attached.

Witness my hand this 27th day of October, 1920.

J. D. GREEN,
Clerk of Said House of Representatives.

70 Sworn to before me this 27th day of October, 1920 A. D., at
Nashville, Tennessee.

[SEAL.]

E. R. PENNEBAKER, JR.,
Notary Public.

Transcript of Senate Journals, Extraordinary Session, 61st General Assembly, State of Tennessee, on Senate Joint Resolution No. 1, Relative to Ratifying the 19th Amendment to the Constitution of the United States.

Monday, August 9, 1920.

First Day.

In accordance with Governor Roberts' Proclamation issued on August 7, 1920, convening the Legislature in Extraordinary Session for the consideration of questions therein named, Mr. Speaker Todd called the Senate to order at 12 o'clock noon.

The proceedings were opened with prayer by Rev. R. Lin Cave, of Nashville, Tennessee.

On a call of the roll the following members responded to their names: Senators Caldwell, Cameron, Candler, Clarke, Coleman, Collins, Dorris, Fuller, Harber, Haston, Hill, Houk, McFarland, McMahan, Matthews, Parks, Patton, Rice (of Shelby), Rice (of Stewart), Stokard, Summers, Whithy, Wikle and Mr. Speaker Todd—24.

Governor Roberts' Proclamation issued on August 7, 1920, convening the Legislature in Extraordinary Session was read by the Clerk and was as follows:

Proclamation.

To the Members of the Sixty-first General Assembly of the State of Tennessee:

You are hereby called to meet in extraordinary session at the State Capitol in Nashville, Tennessee, at noon, on Monday, August 9, 1920, for the purpose of taking action upon the following subjects deemed of sufficient importance to require immediate attention, to wit:

1. To take action upon the amendment of the Constitution of the United States proposed by the Congress, giving women full right of suffrage, being the proposed Nineteenth Amendment to the Federal Constitution.

* * * * *

Only matters of compelling urgency have been included in this call. It is less than five months until the Legislature will convene in regular session, at which time other matters, both general and special, which have been strongly urged upon me, can be taken up at a time when they may receive full consideration. The pledges made in the Democratic platform not hereinbefore specifically mentioned are in no sense ignored, but will be fully redeemed by the incoming Legislature.

In Testimony Whereof, I have hereunto set my hand and caused the great seal of the State to be affixed at the Capitol at Nashville, on Saturday, August 7, 1920.

A. H. ROBERTS,
Governor.

IKE B. STEVENS,
Secretary of State.

The said Resolution submitted to the various Legislatures in blank, was ordered spread on the Journal and was as follows:

Subject: Concurrent resolution ratifying the proposed amendment to the Constitution of the United States on Woman Suffrage.

Senate concurrent resolution Number — by — —.

House concurrent resolution ratifying the proposed amendment to the Constitution of the United States on Woman Suffrage.

72 Whereas, the Sixty-sixth Congress of the United States of America, in both Houses by a constitutional majority of two-thirds thereof has made the following proposition to amend the Constitution of the United States, in the following words, to wit:

Joint Resolution

Proposing an Amendment to the Constitution Extending the Right of Suffrage to Women.

Resolved by the Senate and House of Representatives of the United States of America, in Congress assembled, two-thirds of each House concurring therein, that the following Article is proposed as an Amendment to the Constitution, which shall be valid to all intents and purposes as part of the Constitution when ratified by the Legislatures of three-fourths of the several States:

Article —.

The right of citizenship of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have power to enforce this Article by appropriate legislation.

Therefore, be it resolved by the General Assembly of the State of —, that the said proposed amendment to the Constitution of the United States be and the same is hereby ratified by the General Assembly of the State of —.

Resolved, that certified copies of the foregoing preamble and resolution be forwarded by the Governor of the State of — to the President of the United States, the President of the Senate of the United States and the Speaker of the House of Representatives of the United States.

The letter to the Governor accompanying the copy of the foregoing resolution was ordered spread on the Journal and was as follows:

73

Department of State,

Washington,

June 12, 1919.

The Honorable the Governor of the State of Tennessee, Nashville, Tennessee.

SIR:

I have the honor to enclose a certified copy of a Resolution of Congress, entitled "Joint Resolution Proposing an Amendment to the Constitution Extending the Right of Suffrage to Women," with the request that you cause it to be submitted to the Legislature of your State for such action as may be had, and that a certified copy of such action be communicated to the Secretary of State as required by Section 205, Revised Statutes of the United States. (See overleaf.)

An acknowledgment of the receipt of this communication is requested.

I have the honor to be, Sir,

Your obedient servant,

FRANK L. POLK,
Acting Secretary of State.

Enclosure Joint resolution as above.

Accompanying said message from the Governor and the Amendment, was an opinion from Attorney-General Frank M. Thompson, which was also ordered spread on the Journal and was as follows:

Chattanooga, Tennessee, June 24, 1920.

Governor A. H. Roberts,
Executive Chamber,
Nashville, Tennessee.

DEAR SIR:

Referring to the conversation had between us and also to the request made by Mrs. Milton asking for an opinion as to
74 whether or not, in view of the constitutional provisions, both Federal and State, and the recent decision of the Supreme Court of the United States, the present Legislature can ratify the 19th Amendment, known as the Suffrage Amendment, the same having been proposed by Congress to the States of the Union since the election of the members of the present General Assembly of Tennessee, I beg to reply as follows:

The Resolution of Congress proposing to the States the 19th Amendment to the Federal Constitution is in the following language:

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each house concurring therein), that the following article is proposed as an amendment to the Constitution, which shall be valid to all intents and purposes as a part of the Constitution when ratified by the legislatures of three-fourths of the several States:

'Article I.

The rights of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex; and Congress shall have power to enforce this article by appropriate legislation.' "

The present Legislature of Tennessee was elected in November, 1918, and the terms of office of the members thereof expire in November, 1920. This Legislature was required by the Constitution of Tennessee to meet on the first Monday in January, 1919, in regular session, which it did, and which has, of course, adjourned. It cannot meet again until it expires by law without a special call by the Governor for it to meet in extraordinary session.

This 19th Amendment was proposed under Article V, of the Constitution of the United States.

I have not the exact date of the resolution proposing the amendment, but, of course, it was subsequent to the election of the members of the present Legislature.

The question has arisen as to whether or not the present Legisla-

ture of Tennessee can, in extraordinary session, ratify this
75 19th or Suffrage Amendment, or whether it is precluded from
so doing by Article II, Section 32, of the Tennessee Constitu-
tion.

The article on the amendment of the Federal Constitution is in
this language:

"The Congress, whenever two-thirds of both Houses shall deem it
necessary, shall propose amendments to this Constitution, or on the
application of the Legislatures of two-thirds of the several States,
shall call a convention for proposing amendments, which in either
case shall be valid to all intents and purposes as a part of this Con-
stitution when ratified by the Legislatures of three-fourths of the
several States, or by conventions in three-fourths thereof, as the one
or the other mode of ratification may be proposed by Congress; pro-
vided, that no amendment which may be made prior to the year One
Thousand Eight Hundred and Eight shall in any manner affect the
first and fourth clauses in the ninth section of the first article; and
that no State, without its consent, shall be deprived of its equal
suffrage in the Senate."

Article II, Section 1, of the Constitution of Tennessee provides
that:

"The powers of the Government shall be divided into three de-
partments; the legislative, executive and judicial."

Section 2 of the same article provides:

"That no person or persons belonging to one of the departments
shall exercise any of the powers properly belonging to either of the
other, except in the cases herein directed or permitted."

Section 3 of the same article is in this language:

"The legislative authority in this State shall be vested in a general
assembly, which shall consist of a Senate and House of Representa-
tives, both dependent on the people, who shall hold their offices for
two years from the date of the general election."

76 Section 8 of the same article, after providing for the first
meeting of the first general assembly under the Constitution
of 1870, then contains this language:

"And forever thereafter the general assembly shall meet on the
first Monday in January ensuing the election, at which session
thereof the Governor shall be inaugurated."

Section 23 of the same article fixes the compensation of each
member at \$4.00 per day, and then contains this language:

"And no member shall be paid for more than seventy-five days
of a regular session, or for more than twenty days of an extra or

called session, or for and day when absent from his seat in the Legislature, unless physically unable to attend."

The 32nd Section of the same article is as follows:

"No convention or general assembly of this State shall act upon any amendment to the Constitution of the United States proposed by Congress to the several States unless such convention or general assembly shall have been elected after such amendment is submitted."

Article III, Section 1, provides that the supreme executive power of this State shall be vested in the Governor.

Section 9 of Article III provides that:

"He (the Governor) may, on extraordinary occasions, convene the general assembly by proclamation, in which he shall state specifically the purpose for which they are to convene, and they shall enter on no legislative business except that for which they are specifically called together."

It will thus be seen that the Legislature of Tennessee is required by the State Constitution to meet on the first Monday in January every two years; that its regular session begins then, and may extend for as long a period as its members desire, but that said members can receive pay for but seventy-five days' service.

As before shown, the present legislature did meet on the first Monday in January, 1919, in regular session and served
77 seventy-five days, and then adjourned sine die.

Further that the resolution of Congress submitting to it, along with the other States in the Union, this proposed amendment, was passed after the election of the present legislature of Tennessee.

It is further seen from the above constitutional provisions that the Governor of Tennessee may convene the legislature in extraordinary session, but that if he does so, he must state the purposes for which they are to so convene, and that the legislature can enter into no legislation except upon the subjects mentioned in the call or proclamation.

Section 9, of Article III, which provides that the Governor may call the legislature in extraordinary session, but that it can enter into no legislative business except that for which they are specifically called together, has been under review by the Supreme Court of this State, and legislation outside of and beyond the purposes and objects stated in the call or proclamation was held to be void, *State of Tenn. ex rel. vs. Wollen*, 128 Tenn. 456.

It will be further noted that by said Section 32 of Article II, the Tennessee Constitution has attempted to prevent the legislature from ratifying any amendment to the Federal Constitution proposed by the Congress of the United States subsequent to its election.

The questions, then, arise: (1) As to whether the legislature of Tennessee, or any other State, derives its power to ratify or reject this amendment from the Federal Constitution or from the people

of the State as a sovereign, or the State Constitution; and (2) If the legislatures of the several States and of Tennessee derive their power from the people of the State as a sovereign, or from the Constitutions of the respective States, then is said Section 32, of Article II, of the Tennessee Constitution in conflict with Article V of the Federal Constitution?

The Constitution of Ohio, adopted by a vote of the people of that State in November, 1918, contains this provision:

78 "The legislative power of the State shall be vested in a General Assembly, consisting of a Senate and House of Representatives, but the people shall reserve to themselves the power to propose to the General Assembly laws and amendments to the Constitution, and to adopt or reject the same at the polls on a referendum vote, as hereinafter provided. The people also reserve to themselves the legislative power or the referendum on an action of the General Assembly ratifying any proposed amendment to the Constitution of the United States."

In December, 1917, the Congress of the United States proposed to the several States an amendment thereto prohibiting the manufacture, sale and importation and exportation of intoxicating liquors. The General Assembly of Ohio ratified this proposed amendment. Whereupon, George S. Hawke, a citizen of Ohio, filed a petition in the State Court of that State against Harvey C. Smith, Secretary of State, to enjoin him from preparing the ballots and expending the public money to hold a referendum election, ratifying the action of said legislature. This petition was demurred to; the demurrer was sustained by the lower Court and the petition dismissed. Thereupon, the case was appealed to the Supreme Court of Ohio, where the action of the lower court was sustained; which, of course, meant that the State of Ohio, under its Constitution, had authority to require the submission of the ratification of the proposed amendment by the legislature to a referendum vote of the people. The case then went to the Supreme Court of the United States. This presented, of course, two questions: First, as to whether or not the legislature of Ohio, as well as the legislature of the other States of the Union, derive their authority to ratify a proposed amendment to the Federal Constitution submitted to them by Congress from the Federal Constitution, or from the people of the State as a political entity, or the Constitution of the State; second, if such power is derived from the State or the Constitution of the State, then was the clause of the Constitution of Ohio above quoted in conflict with Article V of the Federal Constitution?

I understand the Supreme Court to have announced the following principles:

79 (1) That the Constitution of the United States was ordained by the people, and, when duly ratified, it became the Constitution of the people of the United States.

(2) That thereby the States surrendered to the general government the powers specifically conferred upon the Nation, and, hence,

the Constitution and the laws of the United States are the supreme law of the land.

(3) That the framers of the Federal Constitution realized that it might, in the progress of time and the development of new conditions, require changes, and that they intended to provide an orderly manner in which these changes could be accomplished; to that end, they adopted the said fifth article.

(4) That said fifth article is therefore a grant of authority by the people of the United States to Congress; that the determination of the method of ratification is the exercise of a national power specifically granted by the people in the Federal Constitution; that this power is conferred upon the Congress, and is limited to two methods, to wit: By action of the legislatures of three-fourths of the States, or by conventions in a like number of States.

(5) That the framers of the Constitution, in requiring ratification by the legislatures and by the use of the word "legislatures," meant the representative body in each State which makes the laws for that State.

(6) But that the act of the legislature of each State of the ratification of a proposed constitutional amendment is not an act of legislation, although performed by the law-making body, but that it is an expression of the assent of the State to the proposed amendment; that it is the exercise not of a legislative function but of a Governmental or political function. That the power of the State to legislate and to enact laws of the State is derived from the people of the State, and is limited or restrained alone by the Constitution of the State, and, of course, the Federal Constitution; but that the power to ratify a proposed amendment to the Federal Constitution is derived from the Federal Constitution, or, more correctly speaking, the people of the United States through the Federal Con-

80 stitution. In other words, that the act of ratification of a Federal amendment by the State derives its authority from the Federal Constitution, to which the State and its people alike assented. *Hawke vs. Smith*, No. 582, Supreme Court Docket of the United States, decided June 1, 1920.

From the foregoing principles established by the Supreme Court of the United States, if I understand them correctly, I have reached the following conclusions:

(a) That the Legislature of Tennessee derives its power to legislate upon all domestic matters directly from the people of Tennessee, restrained only by the Constitution of Tennessee.

(b) That the act of ratification of the proposed amendment nineteen to the Federal Constitution is not a legislative act or function, but a governmental or political act or function.

(c) That the legislature of Tennessee derives the power to perform this governmental or political function of ratification, or of

refusing to ratify this suffrage or nineteenth amendment, from the fifth article of the Constitution of the United States, and not from the people of Tennessee in its organized form as a State government, or from the Constitution of Tennessee.

(d) That therefore the legislature of Tennessee would not be controlled by said Section 32 of Article II of the Tennessee Constitution, if it should meet in extraordinary session and either ratify or decline to ratify said suffrage or nineteenth amendment.

(e) I think, therefore, that if the legislature of Tennessee should be called in extra session, and should see proper to ratify this suffrage amendment, and to disregard said Section 32 of Article II of the Tennessee Constitution, and the question should be made that its act was invalid because violative of said Article II, Section 32, of the Tennessee Constitution, that the Supreme Court of the United States would hold that the legislature of Tennessee derived its power for its act from the fifth article of the Federal Constitution, 81 and that, if it derived any power at all from the Tennessee Constitution, particularly Article II, Section 32, the same is in conflict with the Federal Constitution, the latter instrument being the supreme law of the land.

I think the foregoing result would follow regardless of whether or not the Governor included the ratification or rejection in his call to be considered by the legislature.

What I mean is this: By Article III, Section 9, of the Tennessee Constitution, the Governor would be required, if he called the legislature in extraordinary session, to place therein the subjects to be legislated upon, and that the legislature would be limited, in matters purely of legislation, to those subjects, but that, in the exercise of this governmental or political function of ratification or refusing to ratify, the legislature would not be controlled by the terms of the Governor's call, or limited to the subjects mentioned in the call.

Section 7, of Article I, of the Federal Constitution provides that:

"Every order, resolution or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States, and before the same shall take effect shall be approved by him, or, being disapproved by him, shall be passed by two-thirds of the Senate and House of Representatives."

Article II, Section 18, of the Tennessee Constitution provides that:

"Every bill shall be read once on three different days and be passed each time in the House where it originated before transmission to the other. No bill shall become a law until it shall have been read and passed on three different days in each House, and shall have received on its final passage in each House the assent of a majority of all the members to which that House shall be entitled under this Constitution; and shall have been signed by the respective speakers in open session; the fact of such signing to be

82 noted on the Journal; and shall have received the approval of the Governor, or shall have been otherwise passed under the provisions of this Constitution."

Article III, Section 18, of the Tennessee Constitution is as follows:

"Every bill which may pass both Houses of the General Assembly shall, before it becomes a law, be presented to the Governor for his signature. If he approve it, he shall sign it, and the same shall become a law, but if he refuse to sign it, he shall return it with his objection thereto in writing to the House in which it originated; and said House shall cause said objection to be entered at large upon its Journal and proceed to reconsider the bill. If after such reconsideration a majority of all the members elected to that House shall agree to pass the bill notwithstanding the objection of the Executive, it shall be sent with said objection to the other House, by which it shall likewise be reconsidered. If approved by a majority of the whole members elected to the House, it shall become a law. The votes of both Houses shall be determined by yeas and nays, and the names of all the members voting for or against the bill shall be entered upon the Journals of their respective Houses. If the Governor shall fail to return any bill within five days (Sunday excepted) after it shall have been presented to him, the same shall become a law without his signature, unless the General Assembly by its adjournment prevents its return, in which case it shall not become a law. Every joint resolution or order (except on questions of adjournment) shall likewise be presented to the Governor for his signature, and, before it shall take effect, shall receive his signature, and on being disapproved by him, shall in like manner be returned with his objection; and the same, before it shall take effect, shall be repassed by a majority of all the members elected to both Houses in the manner and according to the rules prescribed in the case of a bill."

The Congress of the United States, in 1797, proposed the Eleventh Amendment to the Federal Constitution by a Joint Resolution identical in language to the one proposing the said suffrage amendment.

83 By it, it was provided that the judicial powers of the United States should not be construed to extend to any suit in equity prosecuted against any one of the States by any citizen of that State or any foreign State. This resolution proposing this Eleventh Amendment was never submitted to the President for his signature or rejection. This fact was made one of the grounds for the contention that the amendment was invalid. The Attorney-General answered that the amendment was a substantive act, disconnected with the ordinary business of legislation, and not within either the policy or terms of the Constitution vesting the President with a qualified negative of acts or resolutions on Congress. In other words, the Attorney-General made the point that the signature of assent or disapproval of the President was only required to those acts and resolutions which were legislative acts or resolutions, and not to acts and resolutions of Congress which were political and non-

legislative. Further, that the President of the United States had nothing to do whatever with the political function of an amendment to the Federal Constitution.

This view of the Attorney-General was sustained by the Supreme Court of the United States in an unanimous opinion at its February term, 1798. *Hollinsworth vs. Virginia*, 3 Dallas, 378.

This *Hollinsworth* case was quoted approvingly by the present Supreme Court of the United States in its opinion in the case of *Hawke vs. Smith*, *supra*, rendered on the first day of June of the present year.

It was quoted approvingly and followed by the Supreme Court of this State in 1909, in the case of *Richardson vs. Young*, 122 Tennessee, 474, et seq.

In this last case, the section of the State election law under consideration provided that the members of the State Board of Election should be elected prior to the first Monday in April, 1909, by the legislature, on a date to be fixed by joint resolution of the General Assembly, and that thereafter, at each biennial session, one member of such board should be elected prior to the first Monday in April, on a date to be fixed by joint resolution of said legislature. The

legislature fixed a date by joint resolution for the election of 84 this board, which resolution was vetoed by the Governor.

Before the date of election fixed by the joint resolution arrived, a quorum of the Senate was broken by the members thereof leaving the State. However, a majority of both Houses met on the said date fixed in said joint resolution and proceeded to elect said officers. Litigation ensued. The Supreme Court of this State, after first quoting the various clauses of the Tennessee Constitution providing that the powers of the State government should be divided into legislative, executive and judicial, and after defining the same, held that the power to elect or to appoint to public office was a political power which was not inherently either legislative, judicial or executive, but that said power should be exercised by either of the three branches of the government, that it, by the legislative, executive, or judicial, as the legislature might see proper, in creating the office, to determine.

It therefore held that the selection of these members of the Election Board by the legislature was a political function, and not a legislative function, and that the joint resolution was not such a resolution as required, under said Article II, Section 18, and Article III, Section 18, of the Tennessee Constitution, either the approval or disapproval of the Governor. It held, therefore, that said joint resolution did not require either the approval or disapproval of the Governor, and that, hence, his veto of the same was ineffectual for any purpose. In doing this it cited and quoted approvingly from the case of *Hillingsworth vs. Virginia*, *supra*. In other words, the Supreme Court of Tennessee and the Supreme Court of the United States appear to be in perfect accord upon the proposition that where legislative bodies, whether it be the Congress of the United States or the legislature of Tennessee, are performing a political function, they are not legislative bodies within the sense and meaning of the Fed-

eral or State Constitutions, and that the executive—that is the President or the Governor, as the case may be—cannot control the action of either by veto, as he can when the matter under consideration is purely legislative.

These conclusions lead me to believe that, if the Governor calls the legislature in extraordinary session at any time before the
85 next November election, it can, if it sees proper, ratify this Nineteenth Amendment. It can do this, in my judgment, regardless of whether he mentions the ratification or rejection in the proclamation or call for the extra session.

In view of the well known opposition of a class of citizenship, without regard to political affiliations, against woman's suffrage; the fact that, if Tennessee should ratify this Amendment, it would affect every State in the Union and give to the women of each State, who are otherwise qualified to vote under the State law, the right of suffrage; the widely divergent views of the two dominant parties in the Government upon both economic and foreign policies and the fact that it is not known to which side this large vote would lean, I felt that litigation would necessarily ensue, either to prevent the consummation of the ratification by the legislature, or else to have its acts ratifying the proposed amendment declared void and women denied the right of suffrage; hence, I felt it incumbent upon me to submit an exact duplicate of the foregoing letter to the Department of Justice, through General Frierson, who is a Tennesseean, and, also, to Judge Cordell Hull, representative in Congress from the Fourth District, in order that they might discuss the matter with Federal officials, and get the opinion and views of the Department of Justice and of as many Senators and Representatives upon this legal question as could be had.

I have not yet heard from Judge Hull, who is at San Francisco. However, I am in receipt of a letter from General Frierson, which is as follows:

"I am in receipt of your letter enclosing copy of one written by you to Judge Hull, discussing the matter of calling an extra session of the legislature to ratify the suffrage amendment. I agree entirely with your conclusion that if the Governor calls an extra session and names the suffrage amendment in his call the legislature may lawfully ratify. I am not so sure that this would be true of the Governor should omit from his call any mention of the suffrage amend-

86 ment. There is no doubt in my mind that the power of the legislature to ratify is derived from the people of the United States through the Federal Constitution and not from the people or the Constitution of the State. It may be said, however, that the framers of the Constitution had in contemplation a representative body not continuously in session but meeting at certain definite times fixed by law. The action of a legislature so assembled, cannot, I think, be fettered by any restrictions sought to be imposed by the State Constitution. I am not sure, however, that it can be said that the right of a State to provide that, when an emergency requires the assembling of the legislature in extra session, it shall be confined to subjects of legislation mentioned in the call,

may not be exercised without coming in conflict with the provisions of the Constitution of the United States relating to amendments. At any rate, if an extra session is called, I think this subject ought to be specifically mentioned, for if it should be omitted and the legislature should act, the result would be simply to give another ground for uncertainty.

I have considered your suggestions as to the danger that may result from action of this kind at this time and have discussed them with the Attorney-General. It is possible, of course, that embarrassing litigation may result, but we are inclined to the view that these dangers are not sufficiently threatening to deter the Governor from calling an extra session if he thinks it otherwise advisable."

This correspondence between Judge Hull, Mr. Frierson and myself, is the basis of the correspondence between General Frierson and the President, as carried in today's papers.

In view of the doubt expressed by General Frierson, and his suggestion that this ratification be specifically mentioned in the call, I think, if you see proper to call an extraordinary session, that you should include it in your proclamation. While I do not think it is necessary, I think it would be a proper precaution to take.

From the foregoing you will at once see that it is my view that, if you do call the legislature into extra session, it can ratify this proposed amendment.

Of course, the question of policy as to calling it at all, or as to the time it should be called, and the purposes for which it should be called, are matters for you to determine, and about which I should not express an opinion.

Yours truly,

(Signed)

FRANK M. THOMPSON,

Attorney-General.

Tuesday, August 10, 1920.

Second Day.

The Senate met at 10:00 o'clock A. M., pursuant to adjournment and was called to order by Mr. Speaker Todd.

The proceedings were opened with prayer by Senator Cameron.

On a call of the roll all of the Senators responded to their names except Messrs. Candler, Coleman and Rice (of Shelby).

On motion the reading of the Journal was dispensed with.

Mr. M. H. Copenhaver presented his certificate and was administered the official oath by Mr. Speaker Todd.

Mr. Copenhaver was appointed in the place of Senator Worley on all Committees.

Introduction of Resolutions.

By Mr. Speaker Todd—Senate Joint Resolution No. 1—relative to ratifying the 19th Amendment to the Constitution of the United States.

Under the rules the Resolution lies over.

Wednesday, August 11, 1920.

Third Day.

The Senate met at 11:00 o'clock A. M., pursuant to adjournment and was called to order by Mr. Speaker Todd.

88 The proceedings were opened with prayer by the Chaplain, Rev. R. Lin Cave.

On motion the calling of the roll was dispensed with.

On motion the reading of the Journal was dispensed with.

Mr. J. W. Murrey, Senator elect, presented his certificate and was sworn in as Senator by Mr. Speaker Todd.

Mr. Murray was appointed by Mr. Speaker Todd to serve in the place of Senator Louthan on all Committees.

Resolutions Lying Over.

Senate Joint Resolution No. 1—Relative to ratifying 19th Amendment.

Mr. Candler moved that the Resolution be referred to the Committee on Judiciary.

Mr. Fuller raised the point of order that the question as to which Committee the Resolution should be referred should be left entirely to *h*is judgment of the Speaker.

The Chair held that the point of order was not well taken and that the motion to refer was in order.

Mr. Fuller moved that the motion to refer the Resolution to the Judiciary Committee be laid on the table and on the call of the roll the motion prevailed by the following vote:

Ayes	14
Noes	12

Senators voting Aye were:—Messrs. Bradley, Burkhalter, Collins, Copenhagen, Dorris, Fuller, Gwin, Harber, Haston, Houk, McMahon, Matthews, Stockard and Wikle—14.

Senators voting No were: Messrs. Cameron, Candler, Coleman, Long, McFarland, Miller, Monroe, Murrey, Parks, Rice (of Stewart), Summers and Whitby—12.

The Resolution was referred to the Committee on Constitutional Amendments.

89

Friday, August 13, 1920.

Fifth Day.

The Senate met at 10:30 A. M. o'clock, pursuant to adjournment and was called to order by Mr. Speaker Todd.

The proceedings were opened with prayer by the Chaplain, Rev. R. Lin Cave.

On a call of the roll all Senators responded to their names except Messrs. Caldwell, Clarke, Gwin, McFarland and Monroe.

On motion the reading of the Journal was dispensed with.

Reports from Standing Committees.

Constitutional Amendments.

Mr. Gwin presented the majority report, signed by Messrs. Gwin, Copenhaver, Houk, Collins, Murrey, Coleman, Wikle and Hatson, on Senate Joint Resolution No. 1, as follows:

To the Speaker and Members of the Senate:

The Committee on Constitutional Amendments has carefully considered Senate Joint Resolution No. 1 and is of the opinion that the present Legislature has both a legal and moral right to ratify the proposed resolution.

Full power and jurisdiction of the question is conferred upon State Legislatures by the F-fth Article of the Federal Constitution. This power is not conferred upon some and withheld from others, but is granted to all, and any Legislature may lawfully exercise the power thus expressly conferred. Therefore, the provision of the Constitution of Tennessee which undertakes to deny to the present Legislature the right to exercise such power is clearly null and void because in direct conflict with the United States Constitution. To attempt to deny to this Legislature, or any Legislature, this power is not only without legal force and effect, but is clearly not binding as a moral obligation. To contend that an illegal provision of a

90 State Constitution imposes a duty or creates a moral obligation, is to state a proposition that is manifestly and fundamentally wrong. The United States Constitution is the supreme law of the land, and it is, therefore, no violation of his official oath for any legislator to disregard a State Constitutional inhibition that is in direct and irreconcilable conflict with the plain provision of the Federal Constitution. On the contrary, to be governed by a nugatory clause of the State Constitution on a purely Federal question—and that is what the 19th Amendment is—would be dangerously near a violation of the oath to support the Constitution of the United States. Legal opinions and common sense arguments could be multiplied in support of this position, but these are deemed unnecessary.

In view of the fact that all the members of this Senate are either democrats or republicans and that both nominees and platforms of their respective parties, State and National, have unequivocally declared for the ratification of this Amendment and that its final adoption is as certain as the recurrence of the seasons, and the further fact that this Senate has heretofore taken a stand in favor of woman's suffrage by the enfranchisement as far as was legally possible of the womanhood of Tennessee, we have not considered it necessary to state the many good reasons that might be urged in favor of the adoption of the Amendment.

National woman's suffrage by Federal Amendment is at hand; it may be delayed but it cannot be defeated; and we covet for Ten-

nessee the signal honor of being the 36th and last State necessary to consummate this great reform.

Fully persuaded of its justice and confident of its passage, we earnestly recommend the adoption of the Resolution.

Respectfully submitted,

L. E. GWIN,

Chairman.

M. H. COPENHAVER.

JNO. C. HOUK.

C. C. COLLINS.

J. W. MURREY.

T. L. COLEMAN.

DOUGLAS WIKLE.

E. N. HASTON.

91 Mr. Cameron presented the minority report, signed by Messrs. Cameron and Rice (of Stewart), as follows:

To the Speaker and Members of the Senate:

The undersigned members of the Committee, make to your Honorable Body the following minority report and recommendation:

That this Body refuse to act upon Senate Joint Resolution No. 1, we being of opinion that the present Legislature has no right or authority to act thereon at all, and that the same should be deferred to the succeeding Legislature.

We therefore dissent from the recommendation of the majority and recommend in lieu that no action upon the subject be taken at this special session.

Respectfully submitted,

J. W. RICE

W. M. CAMERON.

Mr. Cameron made a motion to adopt the minority report.

Mr. Haston made a motion to table the motion to adopt the minority report.

On a call of the roll the result on the motion to table was as follows:

Ayes	23
Noes	10

Senators voting Aye were:—Messrs. Bradley, Burkhalter, Caldwell, Carter, Coleman, Collins, Copenhaver, Dorris, Fuller, Gwin, Harber, Haston, Hill, Houk, McMahan, Matthews, Monroe, Murrey, Patton, Rice (of Shelby), Stockard, Wikle and Mr. Speaker Todd—23.

Senators voting No were:—Messrs. Cameron, Candler, Clarke, Long, McFarland, Miller, Parks, Rice (of Stewart), Summers and Whitby—10.

Mr. Haston made a motion to adopt the majority report. The motion prevailed.

Resolutions Lying Over.

Senate Joint Resolution No. 1—Relative to ratifying proposed 19th Amendment to the United States Constitution.

Mr. Haston made a motion to adopt the Resolution.

Mr. McFarland made the point of order in writing as follows:

Mr. Speaker,

I make the point of order that the Senate has no right or authority to act upon the proposed Amendment to the Federal Constitution under the Constitution of the State of Tennessee, Article 2, Section 32.

McFARLAND.

The Speaker's ruling on the above point of order is as follows:

On the point of order made by the Senator from Wilson, the Speaker rules that it is not in the province of the Speaker to determine or pass upon the authority or power of the Senate to act under the Constitution to consider this proposed Amendment, but that this is a question for the Body to determine.

Point of order overruled.

Mr. McFarland appealed from the ruling of the chair.

Mr. Speaker Todd called Mr. Hill to the chair, who put the question to the Senate as follows:—Shall the ruling of the chair be sustained?

Mr. Gwin made the following point of order:—That discussion must be confined to the appeal from the ruling of the Chair and that it was not in order to discuss the constitutionality of the Resolution.

The Chair ruled that the point of order was well taken.

On a call of the Chair was sustained by the following vote:

Ayes	27
Noes	5

93 Senators voting Aye were:—Messrs. Bradley, Burkhalter, Caldwell, Cameron, Carter, Clarke, Coleman, Collins, Copenhaver, Dorris, Fuller, Gwin, Harber, Hatson, Hill, Houk, Long, McMahan, Matthews, Miller, Monroe, Murrey, Parks, Patton, Rice (of Shelby), Stockard and Wikle—27.

Senators voting No were:—Messrs. Candler, McFarland, Rice (of Stewart), Summers and Whitby—5.

Mr. Haston renewed his motion on the adoption of the Resolution.

The motion prevailed.

On a call of the roll the Resolution was adopted by the following vote:

Ayes	25
Noes	4
Present not voting	2

Senators voting Aye were:—Messrs. Bradley, Burkhalter, Caldwell, Carter, Coleman, Collins, Copenhaver, Dorris, Fuller, Gwin, Harber, Haston, Hill, Houk, Long, McMahan, Matthews, Monroe, Murrey, Patton, Rice (of Shelby), Stockard, Whitby, Wikle and Mr. Speaker Todd—25.

Senators voting No were:—Messrs. Candler, Parks, Rice (of Stewart) and Summers—4.

Senators present not voting were:—Messrs. McFarland and Miller—2.

A motion to reconsider was laid on the table.

Explanations.

Mr. Speaker:

I refuse to vote on the proposed Federal Amendment from the fact that I am not inclined to perjury myself by violating, what I consider, my solemn oath.

(Signed)

LON P. McFARLAND.

Explanation of Mr. Dorris follows:

94 Explanation of Mr. Dorris of his vote on Senate Joint Resolution No. 1 on the ratification of the Woman's Suffrage Amendment to the Federal Constitution.

Several months ago when it became apparent that the Legislature would be called together in extra session to act upon some vital matters, it also became apparent that the 19th Amendment to the Federal Constitution, giving women the right of suffrage, would be included.

Being in favor of Woman's Suffrage, I set about the task of working out for myself the question as to whether I would be violating my oath to the State if I voted for the Amendment at this time. In trying to arrive at a conclusion, I finally worked out the solution in my own mind, basing my opinion on this construction:

"The Constitution of the United States when adopted and ratified by the States was complete within itself, and no other instrument of any kind not adopted by the same power or ratified by the States could in any way modify or control it."

The United States Supreme Court in deciding the recent case of *Hawke vs. Smith*, among other things, said:

"It is true that the power to legislate in the enactment of the laws of a State is derived from the people of the State. But the power to ratify a proposed amendment to the Federal Constitution has its source in the Federal Constitution. The act of ratification by the State derives its authority from the Federal Constitution to which the State and its people have alike assented."

It is held by many that the present Legislature could not legally ratify the Amendment without violating their oath to the Constitu-

tion of Tennessee. The Constitution of Tennessee, Section 32, Article II, specifically states:

"No convention or general assembly of this State shall act upon any amendment of the Constitution of the United States proposed by Congress to the several States, unless such convention or general assembly shall have been elected after such amendment is submitted."

95 When we follow the Constitution of Tennessee there is only one construction that can be placed upon this point, and that is that it was clearly in the minds of the framers of the Constitution of 1870 that all amendments to the Federal Constitution hereafter submitted should be ratified by the vote of the people, either by election to the general assembly, or by a convention which is equivalent to a referendum by the people. This the Supreme Court of the United States clearly sets out in the *Hawke vs. Smith* decision could not be done. On this point the Court said:

"The Constitution of Ohio in its present form, although making provision for a referendum, vests the legislative power primarily in a General Assembly consisting of a Senate and House of Representatives. Article II, Section 1, provides:

"The legislative power of the State shall be vested in a General Assembly consisting of a Senate and House of Representatives, but the people shall reserve to themselves the power to propose to the General Assembly laws and amendments to the Constitution, and to adopt or reject the same at the polls on a referendum vote as hereinafter provided."

"The argument to support the power of the State to require the approval by the people of the State of the ratification of amendments to the Federal Constitution through the medium of a referendum rests upon the proposition that the Federal Constitution requires ratification by the legislative action of the States through the medium provided at the time of the proposed approval of an amendment. This argument is fallacious in this—ratification by a State of a constitutional amendment is not an act of legislation within the proper sense of the word. It is but the expression of the assent of the State to a proposed amendment."

Therefore, when Section 32, Article II, was written into the Constitution of Tennessee, the framers wrote a clause that was null, void and non-existent.

96 And with this view of the question I have been able to reach the conclusion that I would not be violating my oath to the State when I cast my vote to ratify the Amendment, and I, therefore, vote "aye."

FINLEY M. DORRIS.

Monday, August 16, 1920.

Eighth Day.

The Senate met at 2:00 o'clock P. M., pursuant to adjournment and was called to order by Mr. Speaker Todd.

The proceedings were opened with prayer by the Chaplain, Rev. R. Lin Cave.

On a call of the roll all the Senators responding to their names except Messrs. Bradley, Fuller and Long.

Mr. McFarland reported that Mr. Bradley was absent on account of illness.

On motion the reading of the Journal was dispensed with.

Enrolled Bills.

Mr. Speaker:

Your Committee on Enrolled Bills beg to leave to report that we have carefully examined Senate Joint Resolution No. 1, and find same correctly engrossed and ready for transmission to the House.

SUMMERS,

Chairman.

Tuesday, August 24, 1920.

Sixteenth Day.

The Senate met at 10:30 o'clock A. M., pursuant to adjournment and was called to order by Mr. Speaker Todd.

The proceedings were opened with prayer by the Rev. A. I. Foster.

On a call of the roll all of the Senators responded to their names except:—Messrs. Coleman, Fuller, Harber, Long, Murrey and Rice (of Shelby).

97 On motion the reading of the Journal was dispensed with.

Mr. McFarland moved that the Speaker of the Senate be authorized to appoint a Committee of three with instructed duty to wait on the Governor and report back to the Senate the status of the Suffrage Amendment.

The motion prevailed.

Appointment Announced.

The Speaker announced the appointment of Messrs. McFarland, Copenhaver and Cameron as members of the Committee to wait on the Governor.

Committee Report.

The Committee, appointed by the Speaker to wait on the Governor, and to report back to the Senate the status of the Suffrage Amendment, made the following report in writing:

Mr. Speaker:

We, your Committee, beg to report that after an interview with the Governor that he stated to us, that on advice of the Attorney-General of the State that he had certified to the authorities at Washington, the action of both House and Senate on the 19th Amendment and that he had embodied in his report a copy of both House and Senate Journals as it actually occurred in the Journal.

McFARLAND,
CAMERON,
COPENHAVER.

Committee Report.

Mr. Gwin, Chairman of the Committee appointed to investigate the legal status of the injunction heretofore issued restraining the Clerk from certain duties, made the following verbal report:

The Committee, composed of Senators Gwin, Haston and 98 Collins, report that they have been informed that the injunction heretofore issued restraining the Clerk from communicating to the Senate a report from the Clerk of the House and certain resolutions adopted by the House in regard to Senate Joint Resolution No. 1, had been suspended by writ from the Chief Justice of the Supreme Court and that there was no danger of any legal objection to the Senate receiving and acting on such report.

House Message.

The following message was received from the House through its Clerk:

Mr. Speaker:

I am directed to return to the Senate—Senate Joint Resolution No. 1—relative to ratifying the 19th Federal Amendment:

By the following written motion:

Mr. Speaker:

I move you that the Clerk of this House be, and he is hereby instructed to transmit to the Senate through the ordinary procedure Senate Joint Resolution No. 1.

Attached herewith and made a part of this message is a transcript of the Journal of the House of Representatives of the 61st General Assembly in Extraordinary Session assembled with reference to the action of the House on Senate Joint Resolution No. 1.

GREEN,
Clerk of the House of Representatives.

The attached copy of the House Journal was as follows:

Monday, August 16, 1920.

Eighth Day.

The House met at 2:00 P. M., and was called to order by Mr. Speaker Walker.

The proceedings were opened with prayer by the Chaplain, Rev. R. V. Cawthon.

99 On a call of the roll 98 members were found to be present.

The absent member was Mr. Harris (of Wilson).

On motion the reading of the Journal was dispensed with.

Message from the Senate.

Mr. Speaker:

I am directed to transmit to the House, Senate Joint Resolution No. 1—Relative to the Nineteenth Amendment to the Constitution, adopted for concurrence.

CARTER,
Clerk.

Tuesday, August 17, 1920.

Ninth Day.

The House met at 10.30 a. m., and was called to order by Mr. Speaker Walker.

The proceedings were opened with prayer by the Chaplain, Rev. R. V. Cawthon.

On a call of the roll 96 members were found to be present. The absent members were:—Messrs. Brooks and Rowan, who were excused, and Harris (of Wilson).

On motion the reading of the Journal was dispensed with.

Resolutions Lying Over.

Senate Joint Resolution No. 1—Relative to ratifying the 19th Amendment.

Pending consideration of the Resolution (Mr. Overton presiding). Mr. Walker's motion to adjourn until tomorrow at 10.00 a. m., prevailed by the following vote:

Ayes	52
Noes	44

Representatives voting Aye were:—Messrs. Bond, Boyd, Boyer, Bratton, Burn, Carter, Carr, Cassady, Check, Cole, Crawford (of Fayette), Dunlap, Francisco, Frogge, Gilbreath, Hall, Harville, Hayes, Hickman, Jackson, Keisling, Leath, Long, Martin (of Hamilton), McCalman, McMurray, Millican, Montgomery, Moore, Norvell, Oldham, Overton, Phelan, Rucker, Russell, Sharpe, Sipes, Skidmore, Smith, Story, Swift, Travis (of Franklin),

Turner, Vinson, Weldon, L. M. Whitaker, M. E. Whitaker, Whitfield, Wilson, Wolfenbarger, Womack and Mr. Speaker Walker—52.

Representatives voting No were:—Messrs. Anderson, Bell, Brooks, Canale, Crawford (of Bedford), Davis, Dodson, Dowlen, Ellis, Fisher, Fitzhugh, Forsythe, Griffin, Hanover, Harris (of Knox), Howard, Jeter, Johnson, Kahn, Keaton, Larsen, Light, Longhurst, Luther, Lynn, Martin (of Washington), Miller, Morgan, Moose, Odle, Phillips (of Hawkins), Phillips (of Madison), Rector, Riddick, Shoaf, Simpson (of Bradley), Simpson (of Humphreys), Stovall, Swink, Tarrant, Thronesberry, Travis (of Henry), Tucker and Wade—44.

Wednesday, August 18, 1920.

Tenth Day.

The House met at 10.00 a. m., and was called to order by Mr. Speaker Walker.

The proceedings were opened with prayer by the Chaplain, Rev. R. V. Cawthon.

On a call of the roll 96 members were found to be present.

The absent members were:—Messrs. Brooks, Harris (of Wilson) and Rowan, who were excused.

On motion the reading of the Journal was dispensed with.

Unfinished Business.

Senate Joint Resolution No. 1—Relative to ratification of 19th Amendment.

Mr. Walker (Mr. Overton presiding) moved that the Resolution be tabled.

101 The motion failed for want of major-ty by the following vote:

Ayes	48
Noes	48

Representatives voting Aye were:—Messrs. Bond, Boyd, Boyer, Bratton, Burn, Carter, Cassady, Check, Cole, Crawford (of Fayette), Dunlap, Forsythe, Francisco, Frogge, Gilbreath, Hall, Harville, Hayes, Jackson, Keisling, Long, Martin (of Hamilton), McMurray, Millican, Montgomery, Moore, Novell, Oldham, Overton, Rucker, Russell, Sharpe, Sipes, Skidmore, Smith, Story, Swift, Thornesberry, Travis (of Franklin), Vinson, Weldon, L. M. Whitaker, M. E. Whitaker, Whitfield, Wilson, Wolfenbarger, Womack and Mr. Speaker Walker—48.

Representatives voting No were:—Messrs. Anderson, Bell, Canale, Carr, Crawford (of Bedford), Davis, Dodson, Dowlen, Ellis, Fisher, Fitzhugh, Foster, Griffin, Hanover, Harris (of Knox), Hickman, Howard, Jeter, Johnson, Kahn, Keaton, Larsen, Leath, Light, Longhurst, Luther, Lynn, Martin (of Washington), McCalman, Miller, Morgan, Moose, Odle, Phelan, Phillips (of Hawkins), Phillips (of

Madison), Rector, Riddick Shoaf, Simpson (of Bradley), Simpson (of Humphreys), Stovall, Swink, Tarrant, Travis (of Henry), Tucker, Turner and Wade—48.

Thereupon the Resolution was concurred in — the following vote:

Ayes	50
Noes	46

Representatives voting Aye were:—Messrs. Anderson, Bell, Burn, Canale, Carr, Crawford (of Bedford), Davis, Dodson, Dowlen, Ellis, Fisher, Fitzhugh, Foster, Griffin, Hanover, Harris (of Knox), Hickman, Howard, Jeter, Johnson, Kahn, Keaton, Larsen, Leath, Light, Loughurst, Luther, Lynn, Martin (of Washington), McCalman, Miller, Morgan, Moose, Odle, Phelan, Phillips (of Hawkins), Phillips (of Madison), Rector, Riddick, Shoaf, Simpson (of Bradley), Simpson (of Humphreys), Stovall, Swink, Tarrant, Travis (of Henry), Tucker, Turner, Wade and Mr. Speaker Walker—50.

102 Representatives voting No were:—Messrs. Bond, Boyd, Boyer, Bratton, Carter, Cassady, Check, Cole, Crawford (of Fayette), Dunlap, Forsythe, Francisco, Frogge, Gilbreath, Hall, Harville, Hayes, Jackson, Keisling, Long, Martin (of Hamilton), McMurrey, Millican, Montgomery, Moore, Norvell, Oldham, Overton, Rucker, Russell, Sharpe, Sipes, Skidmore, Smith, Story, Swift, Thronesberry, Travis (of Franklin), Vinson, Weldon, L. M. Whitaker, M. E. Whitaker, Whitfield, Wilson, Wolfenbarger and Womack—46.

Explanations.

Messrs. Cassady and Hall offered explanations which were spread at large upon the Journal.

Mr. Walker (Mr. Overton presiding) changed his vote from "No" to "Aye," and entered a motion on the Journal to reconsider.

Saturday, August 21, 1920.

Thirteenth Day.

The House met at 10.00 a. m., and was called to order by Mr. Speaker Walker.

The proceedings were opened with prayer by the Chaplain, Rev. R. V. Cawthon.

Mr. Riddick moved that the call of the roll be dispensed with. The motion prevailed.

On motion the reading of the Journal was dispensed with.

Mr. Montgomery made the point of order that no quorum was present and demanded a roll call.

On a call of the roll the following members were found to be present:—Messrs. Anderson, Bell, Bond, Boyer, Brooks, Burn, Canale, Carr, Cassady, Crawford (of Bedford), Davis, Dodson, Dowlen, Ellis,

Fisher, Fitzhugh, Forsythe, Foster, Frogge, Griffin, Hanover, Harris (of Knox), Hickman, Howard, Jeter, Johnson, Kahn, Keaton, Larsen, Leath, Light, Longhurst, Luther, Lynn, Martin (of 103 Washington), Martin (of Hamilton), McCalman, Miller, Montgomery, Morgan, Moose, Odle, Phelan, Phillips (of Hawkins), Phillips (of Madison), Rector, Riddick, Shoaf, Simpson (of Bradley), Simpson (of Humphreys), Stovall, Swink, Tarrant, Thonesberry, Travis (of Henry,) Tucker, Turner, Wade and Mr. Speaker Walker—59.

Mr. Odle moved that the Speaker prepare a list of the absentees and give same to the Sergeant-at-Arms with the request that he go out and arrest any and all absent members and bring them into the House.

Before the motion was put Mr. Speaker Walker announced that under the rules of the House such action on his part was necessary and instructed the Sergeant-at-Arms to secure a list of the absent members and, if possible, bring the members to the House.

On motion of Mr. Riddick at 10.30 A. M., the House recessed for one hour.

At the expiration of the recess the House was called to order by Mr. Speaker Walker.

Mr. Riddick offered the following written motion:

Mr. Speaker: I call from the Journal the motion to reconsider Senate Joint Resolution No. 1.

Mr. Speaker Walker ruled the motion out of order for the following reasons:

1st. Because the roll call shows no quorum present.

Section II of Article II of *the* Constitution of the State provides in part: "Not less than two-thirds of all the members to which each House shall be entitled shall constitute a quorum to do business; but a small number may adjourn from day to day, and may be authorized by law to compel the attendance of absent members.

2nd. Because the Attorney-General of the State has held that it was only necessary for a majority of the members present constituting a quorum to ratify the 19th Amendment. If it requires 104 a quorum to pass on the question of ratification, certain it is that a quorum must be present to reconsider.

3rd. STATE OF TENNESSEE:

To A. H. Roberts, Governor of the State of Tennessee; Ike B. Stevens, Secretary of State of the State of Tennessee; A. L. Todd, Speaker of the Senate of the General Assembly of the State of Tennessee; Seth Walker, Speaker of the House of Representatives of the State of Tennessee, and their counselors, attorneys, solicitors and agents, and each and every one of them. Greeting:

Whereas, in a certain suit instituted in Part 2 of our Court of Chancery at Nashville, by C. Runcie Clements, Rufus E. Fort,

Edward Buford, Dudley Gale, James A. Yowell, A. S. Warren and George Washington, complainants, against A. H. Roberts, Ike B. Stevens, A. L. Todd and Seth Walker, defendants, the complainants having obtained from Honorable E. G. Langford, a fiat for a writ of injunction to issue to enjoin defendants A. H. Roberts, Governor of the State of Tennessee, Ike B. Stevens, Secretary of State, A. L. Todd, Speaker of the Senate of the General Assembly of the State of Tennessee, and Seth Walker, Speaker of the House of Representatives of the General Assembly of the State of Tennessee, and each of them, from making, signing or issuing any proclamation, declaration, resolution or certificate, declaring that the State of Tennessee has constitutionally and legally adopted the proposed Nineteenth Amendment to the Constitution of the United States, and from taking any official action, with reference to the illegal action, with reference to the illegal action of the special session of the General Assembly of the State of Tennessee purporting to ratify and adopt said Nineteenth Amendment to the Constitution of the United States; and

The complainants having executed the bond required by the said fiat; we, therefore, in consideration of the premises aforesaid do strictly enjoin and command you, the said A. H. Roberts, Ike B. Stevens, A. L. Todd and Seth Walker, in their official capacities—set forth above, and all and every person before mentioned, under the penalty prescribed by law, of your and every of your
105 goods, lands, tenements, to be levied to our use, and that you and every of you do absolutely desist from doing any of the things above forbidden, restrained and enjoined—until hearing of this cause in our said Courts of Chancery.

Witness, Joseph R. West, Clerk and Master of our said Court, at office, the first Monday in April, in the year of our Lord, 1920, and in the 144th year of our Independence.

(Signed)

JOSEPH R. WEST,

Clerk and Master,

By C. H. SWANN,

Deputy Clerk and Master.

Mr. Riddick appealed from the decision of the Chair.

The Chair (Mr. Odle presiding) stated that the question was whether or not the Chair should be sustained in its ruling.

On a call of the roll the House refused to sustain the decision of the Chair by the following vote:

Ayes	8
Noes	19
Present, and not voting.....	1

Representatives voting Aye were:—Messrs. Bond, Boyer, Cassidy, Forsythe, Frogge, Martin (of Hamilton), Montgomery and Thronberry—8.

Representatives voting No were: Messrs. Anderson, Bell, Brooks, Burn, Canale, Carr, Crawford (of Bedford), Davis, Dodson, Dowlen, Ellis, Fisher, Fitzhugh, Foster, Griffin, Hanover, Harris (of Knox)

Hickman, Howard, Jeter, Johnson, Kahn, Keaton, Larsen, Leath, Light, Longhurst, Luther, Lynn, Martin (of Washington), McCalman, Miller, Morgan, Moose, Odle, Phelan, Phillips (of Hawkins), Phillips (of Madison), Rector, Riddick, Shoaf, Simpson (of Bradley), Simpson (of Humphreys), Stovall, Swink, Tarrant, Travis (of Henry), Tucker and Wade—49.

The Representative present and not voting was: Mr. Speaker Walker—1.

106 Mr. Riddick offered the following written motion:

Mr. Speaker: I move you that the House now reconsider its action in concurring in the adoption of Senate Joint Resolution No. 1.

Mr. Walker (Mr. Odle presiding) made the point of order that no quorum was present and demanded a roll call.

The Chair (Mr. Odle presiding) stated that he would first have a roll call on Mr. Riddick's motion and after that was disposed of would order a roll call on the demand of Mr. Walker that a quorum was not present.

Mr. Walker again demanded a roll call on the point of order that no quorum was present.

The Chair (Mr. Odle presiding) stated that there was a motion before the House and that a roll call on Mr. Walker's demand that no quorum was present would be ordered immediately after the motion of Mr. Riddick was disposed of.

Thereupon the motion of Mr. Riddick that the House reconsider its action in concurring in and adopting Senate Joint Resolution No. 1 failed by the following vote:

Ayes	0
Noes	49
Present and not voting.....	9

Representatives voting no were: Messrs. Anderson, Bell, Brooks, Burn, Canale, Crawford (of Bedford), Davis, Dodson, Dowlen, Ellis, Fisher, Fitzhugh, Foster, Griffin, Hanover, Harris (of Knox), Hickman, Howard, Jeter, Johnson, Kahn, Keaton, Larsen, Leath, Light, Longhurst, Luther, Lynn, Martin (of Washington), McCalman, Miller, Morgan, Moose, Odle, Phelan, Phillips (of Hawkins), Phillips (of Madison), Rector, Riddicks, Shoaf, Simpson (of Bradley), Simpson (of Humphreys), Stovall, Swink, Tarrant, Travis (of Henry), Tucker, Turner and Wade—49.

107 Representatives present and not voting were: Messrs. Bond, Boyer, Cassady, Forsythe, Frogge, Martin (of Hamilton), Montgomery, Thronesberry and Mr. Speaker Walker—9.

Mr. Walker (Mr. Odle presiding) made the point of order that Mr. Odle was only acting as Speaker by his request and was therefore enjoined from putting any motion before the House.

Mr. Riddick offered the following written motion:

Mr. Speaker: I move you that the Clerk of this House, be, and he hereby instructed to transmit to the Senate through the ordinary procedure Senate Joint Resolution No. 1.

On a vive voce vote the Chair (Mr. Odle presiding) declared the motion carried.

On motion of Mr. Riddick the House adjourned until 3:00 P. M. Monday.

Messrs. Gwin, Haston and Collins made the following motion in writing:

Be it ordered by the Senate that the original copy of Senate Joint Resolution No. 1, now in the hands of the Clerk of the Senate, having been returned to him by the Clerk of the House, together with the report of such Clerk, be spread on the Journal by the Clerk of the Senate, and retain in his possession as a part of the records of the Senate, until the final adjournment of the present session of the 61st General Assembly, and then file with the Secretary of State as a part of the records of his office.

Mr. Monroe made the point of order that the motion was out of order, as the Senate had rules of its own to govern its procedure.

The point of order was overruled by the Speaker.

Mr. Gwin moved that the Rules be suspended for the immediate consideration of the motion in writing.

Mr. Candler moved that the motion to suspend the Rules be laid on the table, and on call of the roll the motion to table failed by the following vote:

108	Ayes	7
	Noes	17

Senators voting Aye were Messrs. Cameron, Candler, Clarke, McFarland, Parks, Rice (of Stewart), and Summers—7.

Senators voting No were Messrs. Bradley, Burkhalter, Caldwell, Carter, Collins, Copenhaver, Dorris, Gwin, Haston, Hill, Houk, Matthews, Miller, Patton, Whitby, Wikle and Mr. Speaker Todd—17.

On motion of Mr. Gwin the motion in writing prevailed.

Senate Joint Resolution No. 1 having been ordered spread on the Journal in compliance with the motion in writing, is as follows:

"A Joint Resolution ratifying a proposed Amendment to the Constitution of the United States, providing that the right of citizens of the United States to vote, shall not be denied or abridged by the United States or by any State on account of sex, and providing further that Congress shall have power to enforce this Article by appropriate legislation.

"Whereas, both Houses of the Sixty-Sixth Congress of the United States of America, at its first session, by a constitutional majority of two-thirds thereof, passed a resolution submitting to the several States a proposition to amend the Constitution of the United States, a certified copy of which has been received by the Governor of the State of Tennessee, from the Secretary of State of the United States, as required by law, and by him transmitted to the General Assembly, the same being in the following words, to wit:

"Sixty-Sixth Congress of the United States of America, At the first Session.

Begun and held at the City of Washington on Monday, the nineteenth day of May, one thousand nine hundred and nineteen.

109

Joint Resolution

Proposing an Amendment to the Constitution Extending the Right of Suffrage to Women.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), that the following article is proposed as an amendment to the Constitution, which shall be valid to all intents and purposes as a part of the Constitution when ratified by the legislatures of three-fourths of the several States.

Article —.

'The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

'Congress shall have power to enforce this Article by appropriate legislation.'

F. H. GILLETTE,

Speaker of the House of Representatives.

THOS. R. MARSHALL,

Vice President of the United States

and President of Senate.

"Be it resolved by the Senate of the State of Tennessee, the House of Representatives concurring, that said proposed Amendment to the Constitution of the United States of America, be, and the same is, hereby ratified by the General Assembly of the State of Tennessee.

"Be it further resolved, that certified copies of the foregoing preamble and Joint Resolution be forwarded by the Governor of the State of Tennessee to the President of the United States, to the Secretary of State of the United States at Washington, District of Columbia, to the President of the Senate of the United States and the Speaker of the House of Representatives of the United States."

110

Wednesday, September 1, 1920.

Twenty-fourth Day.

The Senate met at 10:30 o'clock A. M. pursuant to adjournment and was called to order by Mr. Speaker Todd.

The proceedings were opened with prayer by the Chaplain, Rev. A. I. Foster.

On a call of the roll all the Senators responded to their names except Messrs. Carter, Copenhagen, Gwin and Patton.

On motion the reading of the Journal was dispensed with.

The Clerk of the Senate announced a message just received from the Clerk of the House, relative to Senate Joint Resolution No. 1.

Mr. Haston moved that the Senate pass action for the present on the Resolution just received from the House.

Mr. McFarland moved to amend the motion by making the hour of 3 o'clock as the time for consideration of said Resolution.

The motion prevailed and the motion as amended prevailed.

Afternoon Session.

Wednesday, September 1, 1920.

The Senate met at 2 o'clock P. M. pursuant to adjournment and was called to order by Mr. Speaker Todd.

On motion the calling of the roll was dispensed with.

Special House Message.

The special House message with reference to Senate Joint Resolution No. 1 was brought up for consideration, the hour of 3 o'clock having arrived, same having been previously set by special order, for consideration thereof.

111 Mr. Hill moved that the message be returned to the House for the reason that the whole question was out of the hands of the Senate and the Senate therefore had no jurisdiction.

Mr. Cameron moved to amend the motion by receiving and filing the message, but not spreading it on the Journal.

Mr. Houk moved to table the amendment to the motion and on a call of the roll the motion to table prevailed by the following vote:

Ayes	15
Noes	9
Present not voting	3

Senators voting aye were: Messrs. Bradley, Burkhalter, Caldwell, Coleman, Collins, Dorris, Fuller, Harber, Hill, Houk, Matthews, Murray, Rice (of Shelby), Whitby and Wikle—15.

Senators voting no were: Messrs. Cameron, Candler, Clarke, Long, Miller, Parks, Rice (of Stewart), Summers and Mr. Speaker Todd—9.

Senators present and not voting were: Messrs. McMahan, Monroe and Stockard—3.

On a call of the roll the motion made to return the message to the House, as made by Mr. Hill, prevailed by the following vote:

Ayes	17
Noes	8
Present not voting	3

Senators voting aye were: Messrs. Bradley, Burkhalter, Caldwell, Coleman, Collins, Dorris, Fuller, Harber, Haston, Hill, Houk, Matthews, Murrey, Rice (of Shelby), Whitby, Wikle and Mr. Speaker Todd—17.

Senators voting no were: Messrs. Cameron, Candler, Clarke, Long, Miller, Parks, Rice (of Stewart) and Summers—8.

Senators present and not voting were: Messrs. McMahan, Monroe and Stockard—3.

112

Thursday, September 2, 1920.

Twenty-fifth Day.

The Senate met at 10:30 o'clock A. M. pursuant to adjournment and was called to order by Mr. Speaker Todd.

The proceedings were opened with prayer by the Chaplain, Rev. A. I. Foster.

On a call of the roll all the Senators responded to their names except Messrs. Carter, Copenhaver and Patton.

On motion the reading of the Journal was dispensed with.

House Message.

The Clerk announced another message from the House with reference to Senate Joint Resolution No. 1.

Mr. Haston made the following motion in writing:

Mr. Speaker: Without undertaking to determine the question as to the validity or invalidity of the action of the House, and without undertaking to determine the legal status of Senate Joint Resolution No. 1, I move you that out of courtesy and deference that one House owes to the other, we receive the message from the House and spread the same on the Journal, as is customary in those matters.

Mr. Gwin moved to adjourn until 2:30 o'clock P. M. The motion failed.

Mr. Houk moved to adjourn until 2 o'clock P. M.

Mr. Cameron raised the point of order that no business had been transacted since the last motion to adjourn was made.

The Speaker ruled the point of order well taken.

Mr. Gwin appealed from the ruling of the Chair.

Mr. McFarland was called to the Chair, and — a call of the roll the Chair was sustained by the following vote:

113	Ayes	21
	Noes	5
	Present and not voting	3

Senators voting aye were: Messrs. Bradley, Burkhalter, Caldwell, Cameron, Candler, Clarke, Coleman, Collins, Dorris, Harber, Haston, McFarland, McMaben, Monroe, Murrey, Parks, Rice (of Stewart), Stockard, Summers, Whitby and Wikle—21.

Senators voting no were: Messrs. Fuller, Gwin, Long, Matthews and Rice (of Shelby)—5.

Senators present and not voting were: Messrs. Hill, Miller and Todd—3.

Mr. Houk moved to amend Mr. Haston's motion as follows:

Strike out "and spread on the Journal as is customary in such cases."

Mr. McFarland moved that Mr. Houk's amendment to the motion be laid on the table and on a call of the roll the motion to table prevailed by the following vote:

Ayes	22
Noes	6
Present and not voting	2

Senators voting aye were: Messrs. Bradley, Burkhalter, Caldwell, Cameron, Candler, Clarke, Coleman, Fuller, Gwin, Harber, Haston, Long, McFarland, Miller, Monroe, Murrey, Parks, Rice (of Stewart), Stockard, Summers, Whitby and Mr. Speaker Todd—22.

Senators voting no were: Messrs. Collins, Fuller, Hill, Houk, Matthews and Rice (of Shelby)—6.

Senators present and not voting were: Messrs. McMahan and Wikle—2.

Mr. Gwin moved to adjourn until 2:30 o'clock.

The motion failed by the following vote:

Ayes	8
Noes	22

114 Senators voting aye were: Messrs. Fuller, Gwin, Hill, Houk, Long, Matthews, Rice (of Shelby) and Wikle—8.

Senators voting no were: Messrs. Bradley, Burkhalter, Caldwell, Cameron, Candler, Clarke, Coleman, Collins, Dorris, Harber, Haston, McFarland, McMahan, Miller, Monroe, Murrey, Parks, Rice (of Stewart), Stockard, Summers, Whitby and Mr. Speaker Todd—22.

Mr. Haston moved the previous question.

The motion prevailed.

On a call of the roll the previous motion in writing made by Mr. Haston prevailed by the following vote:

Ayes	21
Noes	4
Present and not voting	5

Senators voting aye were: Messrs. Bradley, Burkhalter, Caldwell, Cameron, Candler, Clarke, Coleman, Dorris, Gwin, Harber, Haston, Long, McFarland, Miller, Murrey, Parks, Rice (of Stewart), Stockard, Summers, Whitby and Mr. Speaker Todd—21.

Senators voting no were: Messrs. Collins, Hill, Houk and Rice (of Shelby)—4.

Senators present and not voting were: Messrs. Fuller, McMahan, Matthews, Monroe and Wikle—5.

A motion to reconsider was laid on the table.

The following is the message from the House returning the message relative to Senate Joint Resolution No. 1:

Mr. Speaker: I am directed by motion of the House to return the following message to the Senate.

GREEN,
Clerk of House.

Mr. Speaker: I have been instructed to transmit the following message by motion of the House:

Mr. Speaker: I move you that the Clerk of the House be and is hereby instructed to notify the Senate that the House has reconsidered its action on Senate Joint Resolution No. 1—Relative
115 to ratifying the 19th Amendment and has non-concurred in the Resolution.

GREEN,
Clerk of House.

Saturday, September 4, 1920.

Twenty-seventh Day.

The Senate met at 10.00 o'clock A. M. pursuant to adjournment and was called to order by Mr. Speaker Todd.

The proceedings were opened with prayer by the Chaplain, Rev. A. I. Foster.

On motion the calling of the roll was dispensed with.

On motion the reading of the journal was dispensed with.

Consent.

Introduction of Resolutions.

By Mr. Haston: Senate Resolution No. 6, relative to rules of the House.

Mr. McFarland made the point of order that there was no quorum present.

The Chair overruled the point of order in view of the fact that the Senator from Van Buren had obtained unanimous consent to introduce and have read the resolution, and as the resolution was now being read the point of order was out of order.

On motion of Mr. Haston the rules were suspended for the immediate consideration of the resolution.

Mr. Farland again made the point of order that there was no quorum present.

On a call of the roll the result showed the presence of a quorum, the following Senators responding to their names: Messrs. Bradley, Burkhalter, Caldwell, Cameron, Collins, Gwin, Harber, Haston, Hill, Houk, Long, McFarland, McMahan, Matthews, Murrey, Patton, Rice (of Stewart), Stockard, Summers, Whitby, Wikle and Mr.

Speaker Todd—22.

116 On motion of Mr. Haston the resolution was adopted.

A motion to reconsider was laid on the table.

The resolution, including said rules, was as follows:

Resolution No. 6.

By Haston.

Whereas, The House of Representatives went through the form on August 31, 1920, of expunging from its Journal certain motions and resolutions which it had previously adopted and also of non-concurring in Senate Joint Resolution No. 1, in which it had previously concurred, and of which concurrence it had through its clerk duly notified this Senate, said report of the House Clerk being accompanied by his certified copy of the House Journal, showing a concurrence in such resolution and further showing that the House by a majority vote of all the members to which it was entitled had refused to reconsider its action in so concurring, which report of the Clerk of the House, together with said certified copy of the House Journal has heretofore been spread on the Journal of this Senate; and

Whereas, said House of Representatives on said date, August 31, 1920, undertook to expunge from its Journal certain of the motions and resolutions duly entered thereon and certified by the Clerk of the House to this Senate and spread on its Journal, thereby undertaking to destroy as legal evidence a part of the record the House had itself made and certified to this Senate; and

Whereas, The Senate is of the opinion that such procedure in so far as it undertook to expunge from the House Journal the record of what had previously transpired was and is wholly null and void and in express violation of the rules of the House:

It is therefore ordered that the rules of the House relating to motions to expunge be spread on the Journal of this Senate, such rules showing that it requires a majority of all the members to which the House is entitled to lawfully adopt an expunging resolution and which rules are as follows:

117 Rule 65 of the House "Rules of Order" reads as follows:

"If any question shall arise which is not provided for in these rules, the same shall be governed by Roberts' 'Rules of Order,' which is hereby adopted." The House has not included in its 'Rules of Order' any provision with regard to rescinding or expunging orders or resolutions previously adopted, but by Rule 65 has 'adopted' Roberts' Rules on those subjects. They are perfectly clear and cannot be misunderstood. They can be found in Rule 11 on page 52 of his Revised Edition; also in Rule 37 on pages 169 and 170.

Said Rule 11 refers to main or principal motions and thus states the vote by which they must be adopted: 'As a general rule they require for their adoption only a majority vote—that is, a majority of the votes cast; but amendments to constitutions, by-laws and rules of order already adopted, all of which are main motions, require a

two-thirds vote for their adoption, unless the by-laws, etc., specify a different vote for their amendment, and the motion to rescind action previously taken requires a two-thirds vote, or a vote of a majority of the entire membership, unless previous notice of the motion has been given.'

Said Rule 37 refers to motions to rescind, repeal or annul and is as follows:

'Any vote taken by an assembly, except those mentioned further on, may be rescinded by a majority vote, provided notice of the motion has been given at the previous meeting or in the call for this meeting; or it may be rescinded without notice by a two-thirds vote of a majority of the entire membership. The notice may be given when another question is pending, but cannot interrupt a member while speaking. To rescind is identical with the motion to amend something previously adopted, by striking out the entire by-law, rule, resolution, section, or paragraph, and is subject to all the limitations as to notice and vote that may be placed by the rules on similar amendments. It is a main motion without any privilege, and therefore can be introduced only when there is nothing else before the

assembly. It cannot be made if the question can be reached
118 by calling up the motion to reconsider which has been previously made. It may be made by any member; it is debatable, and yields to all privileged and incidental motions; and all of the subsidiary motions may be applied to it. The motion to rescind can be applied to votes on all main motions, including questions of privilege and orders of the day that have been acted upon, and to votes on an appeal, with the following exceptions: Votes cannot be rescinded after something has been done as a result of that vote that the assembly cannot undo; or where it is in the nature of a contract and the other party is informed of the fact; or, where a resignation has been acted upon, or one has been elected to, or expelled from, membership or office, and was present or has been officially notified. In the case of expulsion, the only way to reverse the action afterwards is to restore the person to membership or office, which requires the same preliminary steps and vote as is required for an election.

Where it is desired not only to rescind the action but to express very strong disapproval, legislative bodies have, on rare occasions, voted to rescind the objectionable resolution and expunge it from the record, which is done by crossing out the words, or drawing a line around them and writing across them the words, 'Expunged by order of the assembly,' etc., giving the date of the order. This statement should be signed by the Secretary. The words expunged must not be so blotted as not to be readable, as otherwise it would be impossible to determine whether more was expunged than ordered. Any vote less than a majority of the total membership of an organization is certainly incompetent to expunge from the records a correct statement of what was done and recorded and the record of which officially approved, even though a quorum is present and the vote to ex-

punge is unanimous.' Roberts' Rule 47, page 201 relative to resolutions that violate the by-laws of an assembly is as follows:

"Votes that are null and void even if unanimous. No motion is in order that conflicts with the laws of the nation, or state, or with the assembly's constitution or by-laws, and if such a motion is adopted even by a unanimous vote, it is null and void."

119 STATE OF TENNESSEE,
County of Davidson:

I, W. M. Carter, do hereby certify that I am and was prior to and during the Special Session of the General Assembly of the State of Tennessee, held at the Capitol at Nashville, beginning the 9th day of August, 1920, the Clerk of the Senate of said General Assembly; that it was my duty as such Clerk to keep the Journals showing the official action taken by said Senate in all matters; that the extracts hereinabove set forth purporting to be made from the Senate Journals are true and perfect copies of the entries made and appearing upon said Journals; that said entries show all the proceedings had with respect to the proposed adoption of the so-called Suffrage Amendment, or Nineteenth Amendment, to the United States Constitution.

Witness my hand this 27th day of October, 1920.

W. M. CARTER,
Clerk of the Senate.

STATE OF TENNESSEE,
County of Davidson:

I, Ike Stevens, Secretary of State of the State of Tennessee, do hereby certify that the foregoing attestations and certificates made by J. D. Green and W. M. Carter, respectively, are in due form and by the proper officials; and that said Green and Carter were at the time of the proceedings hereinabove shown, Clerks of the House of Representatives and Senate of the General Assembly of the State of Tennessee, respectively; that said Green & Carter were, respectively, the keepers of the Journals officially showing the action of the House and Senate.

In witness whereof I have hereunto set my hand and by order of the Governor have hereunto set the Great Seal of the State of Tennessee this 27th day of October, 1920.

[SEAL.]

IKE B. STEVENS,
Secretary of State of the State of Tennessee.

120 The petitioners further offered in evidence the Journals of the Senate and House of Representatives of West Virginia at the Extraordinary Session of 1920, parts of which follow:

West Virginia Legislature, Senate Journal, Extraordinary Session, 1920.

“Charleston, W. Va.,
Friday, February 27th, 1920.

“Pursuant to the proclamation of His Excellency, Governor Jno. J. Cornwell, hereinafter set forth, dated February 20, 1920, convening the Legislature of the State of West Virginia in extraordinary session on Friday, the twenty-seventh day of February, 1920, the Senate this day assembled in its chamber in the Capitol building at the City of Charleston, at the hour of 12 o'clock, meridian, and was called to order by the President, Hon. Charles A. Sinsel.

“Whereupon,

“The President laid before the Senate the proclamation of the Governor, which was read by the Clerk, and is as follows:

“United States of America,

“State of West Virginia,

“Executive Department.

A Proclamation.

“By the Governor.

“I, Jno. J. Cornwell, Governor of West Virginia, by virtue of the authority conferred upon me by Section 7 of Article 7 of the Constitution and in pursuance thereof, do hereby call the Legislature of said State to convene in its chambers in the Capitol, in the City of Charleston, at noon, Friday, the twenty-seventh day of February, one thousand nine hundred and twenty, to consider and act upon the following subjects:

121 “First. To consider and enact legislation dealing with the high cost of living. To make the taking of excess profits on the necessities of life a misdemeanor and to fix penalties for the violation of the provisions of such statutes as may be enacted on the subject.

“Second. To authorize the Independent School District of Ravenswood to erect a new school building and to levy a tax or a bond issue sufficient for that purpose.

“Third. To amend the charter of the City of Charleston relating to the paving of its streets and alleys.

“Fourth. To amend the charter of the City of Martinsburg relating to paving and sewage and the method of paying for same.

“Fifth. To consider and ratify the Amendment to the Constitution of the United States, extending the right of suffrage to women and to pass all appropriate legislation making the same effective in West Virginia for all purposes.

"Sixth. To amend, if deemed advisable, the corporation laws of the State to allow the issue of non-par stock and to fix the basis of the tax on same.

"Seventh. To make necessary appropriations of public moneys to defray the expenses of the special session.

"In Testimony whereof, I have hereunto set my hand and caused the Great Seal of the State to be affixed.

Done at the Capitol, in the City of Charleston, this the twentieth day of February, in the year of our Lord, one thousand nine hundred and twenty, and in the fifty-seventh year of the State.

By the Governor:

JNO. J. CORNWELL,
Governor.

[SEAL.] HOUSTON G. YOUNG,
Secretary of State.

"Prayer was offered by Rev. T. C. Johnson, Pastor Emeritus of the Baptist Temple, of Charleston.

122 "On a call of the roll of the Senate the following members answered to their names:

"Messrs. Sinsel (President), Arnold, Burgess, Burr, Chapman, Coalter, Coburn, Dodson, Duty, Fox, Frazier, Gribble, Harman, Harner, Hough, Hunter, Johnson, Kump, Luther, Morton, Poling, Sanders, Scherr, Staats, Stewart and York—26.

"Absent:

"Messrs. Block, Lewis, Montgomery and Vencill—4.

"The President announced that a majority of the members elected to the Senate having answered to their names, a quorum was present."

(By concurrent resolution of both Houses a joint committee was appointed to wait on the Governor and notify him that the Legislature is in session. The Governor then presented a message to the House, and also a communication to them transmitting the official copy of House Joint Resolution No. 1 of the 66th Congress of the United States of America, it being a joint resolution proposing an amendment to the Constitution extending the right of suffrage to women.)

"On motion for leave, Mr. Harner offered the following:

"Senate Joint Resolution No. 1—Ratifying the proposed amendment to the constitution of the United States, extending the right of suffrage to women.

"Whereas, The Sixty-sixth Congress of the United States of America at its first session, in both houses, by a constitutional majority of two-thirds thereof, has made the following proposition to amend the constitution of the United States of America in the following words, to wit:

"Joint Resolution Proposing an Amendment to the Constitution Extending the Right of Suffrage to Women.

"Resolved by the Senate and House of Representatives of 123 the United States of America in Congress Assembled (Two-thirds of each House concurring therein), That the following article is proposed as an amendment to the constitution, which shall be valid to all intents and purposes as part of the constitution, when ratified by the legislatures of three-fourths of the several States.

"Article —. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

"Congress shall have power to enforce this article by appropriate legislation." Therefore, be it

"Resolved by the Legislature of West Virginia:

"That the said proposed amendment to the constitution of the United States of America be and the same is hereby ratified.

"Resolved, That certified copies of the foregoing preamble and resolution be forwarded by the Governor of the State of West Virginia to the President of the United States, the Secretary of State of the United States, the President of the Senate of the United States, and the Speaker of the House of Representatives of the United States.

"Which resolution, under the rules, lies over one day."

"Saturday, February 28, 1920.

(On this day, and on Monday, March 1, 1920, numerous petitions and telegrams were received and filed either favoring or opposing the ratification of the amendment which are omitted from this record.)

"Monday, March 1, 1920.

"Senate Joint Resolution No. 1—'Ratifying the proposed amendment to the Constitution of the United States, extending the right of suffrage to women,'

"Coming up in regular order for consideration, was read by the Clerk.

"The question being, 'Shall the resolution be adopted?' "

124 "On a call of the roll,

"The ayes were:

"Messrs. Sinsel (President), Coburn, Dodson, Duty, Fox, Johnson, Kump, Morton, Poling, Sanders, Staats, Stewart and Vencil—13.

"The noes were:

"Messrs. Arnold, Burgess, Burr, Chapman, Coalter, Frazier, Gribble, Harman, Harmer, Hough, Hunter, Lewis, Luther, Scherr and York—15.

"Absent not voting:

"Messrs. Bloch and Montgomery—2.

"After the vote had been verified and before the result was announced, Mr. Harner said:

"Mr. President: In order that I may have the privilege, under the rules of the Senate, to move a reconsideration of the vote just taken, I desire to change my vote heretofore cast in favor of the resolution, and now vote 'No.'

"So a majority of the members present not having voted in the affirmative, the resolution was rejected.

"Pending the calling of the roll, when his name was called Mr. Coulter said:

"Mr. President: Never as long as I am a member of this Senate, shall I knowingly cast a vote upon any question in direct opposition to the expressed will of my constituents. At the same election at which I was elected as a member of this body, the proposed amendment to the Constitution of West Virginia, for the enfranchisement of women, was voted upon. In each of the counties of my district an overwhelming majority of the voters of both dominant political parties registered their protest against such an amendment. Upon this question my constituents have most emphatically and decisively expressed themselves. No matter what I think about the question personally, I should be a traitor to our form of government, to the oath I have taken, and to my own conscience

and manhood if I should go directly contrary to the expressed will of those who sent me here. I take no thought of the question of political expediency. I am little concerned about what other States do or don't do upon this question. The Congress of the United States cannot speak upon this question for the voters of West Virginia, or of my district.

"I represent the counties of Mercer, Monroe, Raleigh and Summers, and my people during the year 1916 had an opportunity to express their sentiments on the question now before the Senate. I have assumed—in fact I know—that such expression, as was indicated by their registered votes on the question, represented their unbridled sentiments, and I should feel derelict in my duty toward them in not at all times—when consistent with the duty I owe my state and nation—complying with their wishes and desires. Personally, I have been inclined to vote for ratification of this amendment; but when I look the question squarely in the face, and realize that out of 16,872 votes cast in my district on the question of the adoption of the woman's suffrage amendment to our Constitution, I find that 12,236 or 73% of my voting constituents voted against the same. Until this question is put in such shape that the voters of this State can again express themselves upon it, and shall reverse the decision they have already rendered, I shall feel it my duty to follow the will of the people as already expressed at the polls by more than ninety thousand majority. I vote 'No.'

"Pending the calling of the roll, when his name was called, Mr. Hough said:

"The proposed adoption of the woman's suffrage amendment to the Constitution of the United States of America is not being done in accordance with the spirit and provisions of either the Federal

Constitution or the Constitution of the State of West Virginia, both of which I am under oath to protect and support in the legislature of West Virginia.

"The Federal Constitution and the Constitution of West Virginia both have obstacles to their being changed by sudden action, great excitement or deep resentment, and both make the will of 126 the people supreme, as well; they are carefully framed in order that the people's real will and considered judgment and not their transient impulses, may be ascertained along with the action of Congress and the Legislature before amendments are finally made.

"The considered judgment and will of the people of West Virginia upon woman suffrage is expressed to this legislature by a vote of 161,607 against to 63,540 for it at the same election when one-half of the membership of this Senate was chosen. I personally feel my vote for ratification of the amendment would be a violation of my oath (and have the appearance of seeking the plaudits of misnomered democracy, which, as a rule analyzes into nobocracy); but we are a republic, pure and simple—a representative government—and as such I will support and defend the supreme will of 161,607 West Virginians against the clamour emanating from the 63,540 by opposing the amendment and vote 'No.'

"Pending the calling of the roll, when his name was called, Mr. Kump said:

"Mr. President and Gentlemen of the Senate: I personally favor the ratification of the 19th Amendment to the Constitution of the United States.

"However, common honesty compels me to declare that, in my opinion, a majority—but not an overwhelming majority—of the voters of my senatorial district, are against the ratification of this amendment, and if this alone was the only element entering into my decision, I would cheerfully yield my personal views and record my vote against this amendment, but I am impelled by other, and to me, more convincing reasons, why I should vote for ratification.

"We are nearing the close of a great contest to determine whether or not equal suffrage shall be adopted in the nation. Governor 127 Cornwell, a democrat, the greatest of all the great governors developed during the terrible war through which we have just passed—my friend and my neighbor—has convoked a republican legislature in extraordinary session to ratify this amendment. He has made it clear that he wants his friends to vote for ratification. He is the titular leader of the Democratic party in West Virginia, and I am a member of that party.

"My friend, my neighbor and my chief has indicated what I should do, and I will carry out his wish, especially so when justice will be attained thereby. Our action in ratifying the pending amendment is only simple justice, long delayed, and equal suffrage, in my opinion, is eternally right. I vote 'Aye.'

"Pending the calling of the roll, when his name was called, Mr. Luther said:

"I wish to state that I am unalterably opposed to woman suffrage

and I will put forth every legitimate effort at my command to protect woman from herself.

"To give her the 'advantage' of the ballot would be robbing her of so many of her charms that the change would put her practically on the same footing with man, thus robbing mankind of its chief home comfort and support, and leaving us with no one to supply the inspiration necessary to accomplish things in a universe already over-run with vexatious problems both little and large.

"And then, taking the Bible as an indisputable authority on all the good things of life; able students have searched its pages carefully for something that would throw some light on the question of woman suffrage, but nothing has been found that could possibly be construed as even suggesting the participation of woman in the conduct of the political affairs of a nation.

"Coming on down the ages, I find that France, at one time, was one of the most moral and upright nations on the face of the globe, but when women danced upon the scene as participants in the public affairs of the nation, this record gradually began to disintegrate and the religious prestige of the country rapidly gave way to the forces of evil. Statistics show that through the neglect of mothers, who gave their time to public affairs rather than to home virtues and comforts, there are more street walkers in France than there are cigarette smokers among the male population of that country, and that at the present rate of degeneration, by actual figures, compiled by 128 the best mathematicians in the world, France will be extinct as a moral force within eighty years, unless there is something done to check the awful crime of race suicide.

"The same conditions will be repeated in the United States under the same circumstances. We already have a sample of the workings of woman suffrage in the State of Colorado. Women have been 'enjoying' the ballot in the state, and what is the result? Colorado stands at the head of the column in the number of divorces granted, and it is a settled fact that a large majority of these divorce proceedings were instituted because of the lewdness of the female participant in the matrimonial venture. The beginning of race suicide in this country dawns with the day that women march to the polls to cast their first ballot.

"The counties of the Sixth Senatorial District which I represent including my native county, that of McDowell, cast in the election of 1916, on the proposition of woman suffrage 1,436 for and 1,662 against; the county of Mingo cast 712 votes for and 2,609 against; the county of Wayne cast 853 for and 3,175 against; the county of Wyoming 399 for and 810 against.

"The total vote of the Sixth Senatorial District was 3,400 for ratification and 11,226 against ratification, which is an average of 75% against ratification.

"I would be unworthy of the confidence of my constituents if I did otherwise than as they have expressed their sentiments on the question of woman suffrage, and I now cast my vote 'No.'

"Pending the calling of the roll, when his name was called Mr. Scherr said:

"Mr. President: I desire to make a brief statement in explanation of my vote and ask that it be printed in the Journal of today's proceedings.

"The resolution before us for our consideration deals with a fundamental question of the highest importance, affecting the very foundation of our civic life—the most important question to *any* kind that was ever presented to a West Virginia legislature; 129 the ratification or rejection of the Anthony suffrage amendment to the federal constitution.

"In reaching my conclusions I weighed carefully the arguments presented both for and against ratification. The great point at issue and the one that should concern us most is whether or not the people of West Virginia desire equal suffrage.

"I firmly believe in the rule of majorities and regard the attempt of the minority to rule, as dangerous and unwarranted by our system of Government.

"So, in dealing with this most important subject at this time, as representatives of the people of the great State of West Virginia, and not of some other State, our attention is called to the fact that at the last general election the registered will of these people defeated woman suffrage by a majority exceeding 98,000 votes—the largest majority ever given any proposition in the history of our State—and there is not the slightest evidence that this sentiment has changed. Every senatorial district represented by the members of this body gave a decided majority against it, so what warrant has this legislature to set aside a verdict of the people so emphatically expressed?

"The fact that other states have voted differently, and desire our legislature to overturn the will of the people of this state, expressed only three years ago, is a poor argument to induce a legislator to give affirmative support to this federal amendment.

"Political expediency has been urged by some of the leaders of both of the dominant political parties. If political or party expediency is to throttle the will of a sovereign people—disregarding their wishes as expressed by the ballot—it is an expediency to which I cannot subscribe, and one that is not consistent with our republican form of government. Principle and the will of the majority, to my mind, should never be subordinated to political or party expediency.

"So, Mr. President, in view of these facts, and obeying the mandates of what I believe to be a majority of the men and women of West Virginia, I vote 'No.' 130

"On motion of Mr. Harmer the Senate adjourned until tomorrow, Tuesday, March 2, 1920, at 2 o'clock P. M."

Wednesday, March 3, 1920.

"Mr. Harmer moved that the Senate reconsider the vote by which it on Monday last rejected,

"Senate Joint Resolution No. 1—'Ratifying the proposed amend-

ment to the Constitution of the United States, extending right of suffrage to women,

"And,

"On that question,

"Mr. Gribble demanded the ayes and noes.

"Whereupon,

"Mr. Harmer moved that the further consideration of the resolution (S. J. R. No. 1) be made a special order for tomorrow, Thursday, March 4, 1920, at 2 o'clock P. M.

"And,

"On that question,

"Mr. Arnold demanded the ayes and noes.

"The demand being sustained, they were ordered and taken as follows:

"The ayes were:

"Messrs. Sinsel (President), Coburn, Dodson, Duty, Fox, Harmer, Johnson, Kump, Morton, Poling, Sanders, Staats, Stewart and Vencil—14.

"The noes were:

"Messrs. Arnold, Burgess, Burr, Chapman, Coalter, Frazier, Gribble, Harman, Hough, Hunter, Lewis, Luther, Scherr, and York—14.

"Absent and not voting:

"Messrs. Block and Montgomery—2.

131 "So, two-thirds of the members present not having voted in the affirmative, the motion to make the further consideration of the resolution a special order did not prevail.

"The question then recurring on the motion of Mr. Harmer that the Senate reconsider the vote by which it on Monday last rejected Senate Joint Resolution No. 1.

"The ayes and noes having been demanded by Mr. Gribble and the demand sustained, they were ordered and taken.

"Pending the calling of the roll, when his name was called, Mr. Burgess sent to the Clerk's desk an explanation of his vote, in writing and requested that the same be spread on the Journal.

"Pending the reading of the same by the Clerk, Mr. Harmer interposed an objection to its insertion in the Journal, on the ground that it was argumentative and not an explanation of the gentleman's vote.

"The Chair ruled that Mr. Burgess had a right, as a member, to have an explanation of his vote recorded in the Journal.

"The explanation of Mr. Burgess is as follows:

"Mr. President: I want it understood that I believe in the dignity, the honor, the glory and the supremacy of American Womanhood. It is because of that belief, which is so strong that it has become a part of my very being, that I will presently cast my vote as I do.

"I believe in the home—the American home and the American fireside. The stability, the strength of American institutions, depend upon the kind and character of our homes. Mr. President, I shall shortly cast my vote for the homes of this great nation.

"Again I stand for the American baby. The home without the prattle of babes and the laughter of little children is a hollow mockery. A lot of platform people will tell you that every baby has the right to be well born; it is true, but they have another and greater right: they have the right to have a mother's care and a mother's love. Mr. President, I shall shortly have the honor and the
132 courage in the face of this powerful lobby to cast my vote for the American baby.

"Up in Wetzel county, on one of her mountain tops there is a humble home, and in that home there is an old woman. Her form is bent with age, her face is furrowed with the trace of many cares; her voice is broken; she totters and her step is slow; she is weary with the journey; her eyes are dim with age, her hands are gnarled and crooked. No, she is not pretty, but she's my mother, and she has a heart of gold, Mr. President. She is not only my mother, but she is the mother of my fourteen brothers and sisters.

"Up in the city of Moundsville there is another home and another mother—a good mother, a true mother, a sweet mother—the mother of my children.

"Mr. President, when a woman goes down into the valley of the shadow; when she risks her life for a life; when she sleeps with death; when she tears from underneath her heart a child—endows it with a spark of human life—we call her by that blessed holy name of mother, and, Mr. President, when I go back home; when I see these mothers of mine, I want, and I am going to look them squarely in the eyes and say: 'I have been over the long trail; I have been to the wigwam of the great chief; I have heard the sirens sing; they wanted to put another burden on your backs; they wanted to make life harder for you; they wanted to make your paths through lands beset by dangers on every side; but, mother and wife, there were brave men there, men good and true, who were not beguiled by the siren's song, yet by her laughter—men big enough, brave enough to defy the threat of kings, and by their good help, we have kept the womanhood of West Virginia, on that high plane where it has ever been, and where I pray God it may ever stay—away from corruption's blot; away from those who play the game of politics for place, and power, and pomp and circumstance. And, Mr. President, I will not only receive the thanks and blessings of these mothers of mine, but the thanks and blessings of a large majority of the mothers, the wives and the sweethearts of my district; not only their thanks and blessings, but the
133 thanks and blessings of a majority of the voters of my district, who, on the same day and at the same polls, when they voted for me and elected me to the Senate of West Virginia, by their votes overwhelmingly declared themselves against woman suffrage.

"Mr. President, I now cast my vote for the womanhood of West

Virginia. I want to vote for the babies of West Virginia, the boys and the girls of West Virginia. I want to vote for the wives and the mothers of West Virginia, and, Mr. President, I want to vote for the homes and firesides of this great nation. I now have the honor and the privilege and the right to vote and do vote, 'No.'

"Mr. Morton moved that the announcement of the vote be postponed until tomorrow, Thursday, March 4, 1920, at 2 o'clock P. M.

"Mr. Gribble raised the point of order that the same motion had already been made and passed upon by the Senate.

"The Chair ruled that the point of order was not well taken.

"The question being on the motion of Mr. Morton that the announcement of the vote on the reconsideration of the Senate Joint Resolution No. 1, be postponed until tomorrow, Thursday, March 4, 1920, at 2 o'clock P. M.

"On that question.

"Mr. Gribble demanded the ayes and noes.

"The demand being sustained, they were ordered and taken as follows:

"The Ayes were:

"Messrs. Sinsel (President), Coburn, Dodson, Duty, Fox, Harmer, Johnson, Kump, Morton, Poling, Sanders, Staats, Stewart and Vencil—14.

"The noes were:

"Messrs. Arnold, Burgess, Burr, Chapman, Coalter, Frazier, Gribble, Harman, Hough, Hunter, Lewis, Luther, Scherr and York—14.

134 "Absent and not voting:

"Messrs. Bloch and Montgomery—2.

"So, a majority of the members present not having voted in the affirmative, the motion to postpone did not prevail.

"Mr. Harmer then moved that the announcement of the vote be postponed until Thursday, March 4, 1920, at 3 o'clock P. M.

"Which motion the Chair ruled was not in order.

"Mr. Harmer then moved that the announcement of the vote be postponed until Friday, March 5, 1920, at 2 o'clock P. M.

"Which motion the Chair ruled was not in order.

"Whereupon, the vote on the reconsideration of the vote on Senate Joint Resolution No. 1 was announced as follows:

"The ayes were:

"Messrs. Sinsel (President), Coburn, Dodson, Duty, Fox, Harmer, Johnson, Kump, Morton, Poling, Sanders, Staats, Stewart and Vencil—14.

"The noes were:

"Messrs. Arnold, Burgess, Burr, Chapman, Coalter, Frazier, Gribble, Harman, Hough, Hunter, Lewis, Luther, Scheer and York—14.

"Absent and not voting:

"Messrs. Bloch and Montgomery—2.

"So, a majority of the members present not having voted in the affirmative, the motion to reconsider did not prevail."

"Monday, March 8, 1920.

"A message from the House of Delegates, by Mr. John, announced the adoption by that body and requested the concurrence of the Senate in

135 "House Joint Resolution No. 1, 'Ratifying the proposed amendment to the Constitution of the United States extending the right of suffrage to women.'

"Mr. Scherr introduced the following resolution:

"Senate Concurrent Resolution No. 2.—'Raising a joint committee to wait upon the Governor.'

"The business of this special session has been completed and for the last four days both branches of the legislature have been idle, and a large number of members of the House have departed for their homes. For the legislature to remain in longer session would be to waste the public funds and the time of members alike, without accomplishing anything which the people desire or approve.

"The resolution to ratify the Nineteenth Amendment to the Federal Constitution was lost by a vote in the Senate of 15 to 13. Reconsideration was moved and failed. According to a rule of this body, which has governed its procedure throughout the history of our State, this subject can not be re-introduced at this session. Rule 12 provides as follows:

"52. The question being once determined, must stand as the judgment of the Senate, and cannot during the session be drawn again into the debate unless reconsidered, and it shall be in order for any member voting with the prevailing side to move a reconsideration of the same within two succeeding days.' "

By no means can a matter once finally disposed of by the Senate at this session, in the manner described by this rule, be brought up again except by the radical action of changing the ancient rule itself. Would it be wise, would it be dignified or decent, for the purpose of retrieving any cause, to alter a rule which—ever since a time prior to the beginning of the American Government—has been regarded as perhaps the greatest safeguard in the proceedings of legislative bodies under a free government? Thomas Jefferson, in his 'Manual,' the text of which is commonly printed in books of law and reference along with the Declaration of Independence and the Constitution of the United States, cites the rule:

136 " 'In parliament a question once carried can not be questioned again at the same session, but must stand as the judgment of the House.' "

And he spoke of the (false):

" 'sense that the right of reconsideration is a right to waste the time of the House in repeated agitations of the same question, so

that it shall never know when a question is done with, should induce them to reform this anomalous proceeding'."

Of the grave and vital importance of adhering to the rules of legislative procedure, Jefferson, in his great 'Manual,' says:

"So far the maxim is certainly true, and is founded on good sense; that it is always in the power of the majority, by their numbers to stop any improper measures proposed on the part of their opponents. The only weapons by which the minority can defend themselves against similar attempts from those in power are the forms and rules of proceeding which have been adopted as they were found necessary, from time to time and are become the law of the House, by a strict adherence to which the weaker party can only be protected from those irregularities and abuses which these forms were intended to check and which the wantonness of power is but too often apt to suggest to large and successful majorities. And whether these forms be in all cases the most rational or not, is really not of so great importance. It is much more material that there should be a rule to go by, than what that rule is; that there may be a uniformity of proceeding in business not subject to the caprice of the Speaker or capriciousness of members. It is very material that order, decency, and regularity be preserved in a dignified public body."

"If the Senate, continuing in session until the time arrives, if it does arrive, when a bare majority can alter the historic provision contained in Rule 52, the Senate would, by venturing upon such radical and revolutionary action, commit a single outrage. The consequences of its action would not end with the present issue, but would rise to vex the members of this body and to open the
137 doors to fresh wrongs against orderly and decent government and the most sacred rights of the people themselves."

"The rule which is herein cited was framed by a parliamentary body prior to the inception of our own government, and was successively adopted by the Federal authority and by the authorities of the several states. It is as old as popular freedom. It is a rule heretofore held everywhere as inviolate as any section of the Federal Constitution itself. It was not made to be lifted at will; to do so would be to subject our government to all the dangers which come from tyrannous majority action."

"The orderly and decent course is for this Senate—having accomplished all that it can accomplish by orderly procedure under its rules—to adjourn without delay. To continue longer in session under the circumstances which prevail would be a violent and arbitrary course, which the people whom we represent could not fail to disapprove. Therefore, be it

"Resolved, by the Senate, the House of Delegates concurring therein:

"That a joint committee of five, consisting of two on the part of the Senate, to be appointed by the President thereof, and three on

the part of the House of Delegates, to be appointed by the Speaker thereof, be appointed for the purpose of notifying the Governor that the legislature is ready to adjourn sine die, having completed its labors, and ask him if he has any further communication to make.

"Pending the reading of the resolution by the Clerk, objection was made thereto by the Senator from Harrison.

"Mr. Harmer: Mr. President, I rise to a point of order, and the point is that the resolution is an argument and not a resolution.

"Mr. Scherr: It is simply stating the facts as carried out.

"The President: It sounds very much to me as though it is an argument.

138 "Mr. Scherr: I think the Senate has the right to consider and determine that.

"The President: It sounds very much like an argument of the question, and I will simply put the matter to a vote of the Senate to decide whether they desire this resolution accepted or not at this time.

"Mr. Gribble: Mr. President—Before this matter can be properly directed to the attention of the Senate, to pass upon it, it will be necessary to complete the reading of it. We don't know what we will be called upon to pass upon here until the reading of the resolution is completed.

"Mr. Harmer: Mr. President, let the Clerk finish it and at the proper time I will make my objection.

"The President: All right; let the Clerk proceed with the reading of it.

"Thereupon, the Clerk completed the reading of the resolution.

"Mr. Harmer: Now, Mr. President, my point of order is, that all of the paper read prior to the resolution, is improper, as it is an argument, attempted to be brought in as a part of the resolution, and I therefore object to its being considered. I have no objection to the resolution, but the preamble, you might call it, to the resolution is purely an argument.

"The President: The resolution is not being considered, Senator, and under the rules, all resolutions—unless the motion is made otherwise—must lie over one day.

"Mr. Harmer: That is the point that I am objecting to. I am objecting to its even being offered as a resolution. If you want an argument, then it should be brought under the rules.

"Mr. Gribble: I rise to a point of order. The resolution is not debatable.

"Mr. Harmer: That is the point that I raised; it is not debatable.

"The President: The resolution is not debatable that is unquestioned, and that is what I was waiting for.

139 "Whereupon,

"Mr. Scherr introduced the following:

"Resolved: That a committee of two be appointed by the President to inform the House of Delegates that the Senate has completed its business and is now ready to adjourn sine die.

"Mr. Harmer: I did not understand whether there has been an action on the other resolution. My point of order is the same as the Senator from Doddridge raised—that this resolution carries debate and puts it into the record, and I ask that the Chair will rule that the resolution be stricken out.

"Mr. Gribble: I raise the same point of order—that the resolution is not debatable.

"Mr. Harmer: It is not a resolution; it is an argument.

"The President: The only way, in my opinion, that this could be acted upon, would be to suspend the rules and take it up for immediate consideration, as under the rules of the Senate it has to lie over one day before it can be taken up and acted upon, and I will therefore rule that the resolution will lie over one day under the rules of the Senate.

"The President: Are there any other motions?

"Mr. Harmer: Mr. President, I desire to give notice that at some time after today I will offer a motion to amend Senate Rule No. 3, so as to read as follows:

"52. The question being once determined, must stand as the judgment of the Senate, and cannot during the session, be drawn again into debate unless reconsidered, and it shall be in order for any member voting with the prevailing side to move a reconsideration of the same within two succeeding business days.

"Provided, however, that nothing contained in this rule shall apply to any question relating to any proposed amendment to the Constitution of the United States of America."

(The motion of Mr. Harmer was never afterwards offered.)

140

"Wednesday, March 10, 1920.

"House Joint Resolution No. 1—'Ratifying the proposed amendment to the constitution of the United States extending the right of suffrage to women.'

"Coming up in regular order for consideration, was read by the Clerk.

"The question being, 'Shall the resolution be adopted?'

"Mr. Gribble said: I arise to a question of personal privilege and raise the point of order that under our rules, where the same matter has been once considered and adjudicated or passed or rejected by this Senate, the same question cannot be taken up and considered a second time. The rule is very plain and explicit on this proposition. This same resolution was passed on by this Senate and rejected; also a motion was made at a subsequent date to reconsider the same which motion also failed. Under the rules this resolution now cannot be considered by this Senate.

"Mr. Harmer: Mr. President—The rule referred to by the Senator from Doddridge does not apply, in my judgment. That applies to questions about matters which the President has announced and the Senate voted upon. This is a House Joint Resolution, now before the Senate for the first time, and it has never been considered before. Besides that, Mr. President, this is an amendment to the constitution

of the United States. It is not here by reason of the fact that the governor put it in his call alone, but is here under the mandate and authority of the constitution of the United States itself, which provides that Congress—when two-thirds of the members of both houses submit an amendment—that they provide that it be submitted to the legislatures of the several states, and it is adopted when three-fourths of the states have ratified the same. Now, there are a number of precedents by which, when a resolution of this kind comes before the legislature and is voted down, that it can come up again at the same session of the legislature. In fact of all the nineteen amendments that have been offered to the Constitution of the United States but one had any limitations as to when it should be ratified by the several state legislatures, and that was the Eighteenth or

141 Prohibition Amendment, which gave the states only seven years in which to ratify. I say that the precedents are such that legislatures have considered the matter at the same session, and I cite as an illustration the State of New York, Virginia, Alabama and various other states. They submitted the question of the amendment to the constitution; they then voted it down, called it up again and voted again. It is not by reason of our rule; it is not by reason of our governor's calling us here in this extra session, but it is by reason of the Congress of the United States having exercised its authority under the Constitution of the United States that this matter is before *his* legislature and will stand here for our consideration or for the consideration of future legislatures until it is ratified.

"The President: Under ordinary circumstances, had this resolution originated either in the Senate or in the House, I would feel that I should know to pass upon this point of order. I have studied this question to quite an extent; have consulted some of the best lawyers that I know; have consulted seven or eight of the lawyers of our own body, and have seen some decisions in connection with Federal amendments, and it has placed me in such a position that I hardly know what to do; so I have determined instead of deciding this point of order myself, to submit it to the vote of this Senate and ask them to express just what they believe in the matter. I am therefore going to ask the Clerk to call the roll, upon what the rule is.

"Mr. Gribble: Mr. President—I insist upon the Chair passing upon this question. The Chair is here under these rules to decide these questions, and I refer to Reed's Rules of Order, Sections 183 and 184.

"The President: I feel that the Chair can place a part of the responsibility of a question of this kind upon the Senate, and have determined to do so. Therefore, I will not rule upon the point of order and will ask that the roll be called. I maintain that I am within my right and will ask the Senate to decide this question.

"Mr. Gribble: I would like the record to show that I have insisted upon the Chair's passing upon this question, and have cited Reed's Rules of Order, Sections 183 and 184 governing this question, which the President has declined to entertain.

"The President: There is no objection, whatever, to the record showing that.

"The question being on the point of order raised by Mr. Gribble.

"On a call of the roll.

"The ayes were:

"Messrs. Arnold, Burgess, Burr, Chapman, Coalter, Frazier, Gribble, Harman, Hough, Hunter, Lewis, Luther, Scheer and York—14.

"The noes were:

"Messrs. Sinsel (President), Bloch, Cobun, Dodson, Duty, Fox, Harmer, Johnson, Kump, Morten, Poling, Sanders, Staats, Stewart and Vencill—15.

"So, a majority of the members present not having voted in the affirmative the point of order raised *be* Gribble was not sustained.

"The resolution (H. J. R. No. 1) was then adopted:

"On adoption of the resolution,

"The ayes were:

"Messrs. Sinsel (President), Bloch, Cobun, Dodson, Duty, Fox, Gribble, Harmer, Johnson, Kump, Morton, Poling, Sanders, Staats, Stewart and Vencill—16.

"The noes were:

"Messrs. Arnold, Burgess, Burr, Chapman, Coalter, Frazier, Harman, Hough, Hunter, Lewis, Luther, Scheer, and York—13.

"Before the announcement of the vote.

"Mr. Gribble said: For the purpose of making a motion to reconsider this vote, I desire to change my vote from 'No' to 'Aye' and request that this statement go into the record.

143 "Mr. Harmer: I move that the vote by which this resolution was adopted, be reconsidered.

"On that question,

"Mr. Gribble demanded the ayes and noes.

"The demand being sustained, they were ordered and taken as follows:

"The ayes were:

"Messrs. Arnold, Burgess, Burr, Chapman, Coalter, Frazier, Harman, Hough, Hunter, Lewis, Luther, Scherr and York—13.

"The noes were:

"Messrs. Sinsel (President), Bloch, Cobun, Dodson, Duty, Fox, Gribble, Harmer, Johnson, Kump, Morton, Poling, Sanders, Staats, Stewart and Vencill—16.

"So a majority of the members present not having voted in the affirmative, the motion to reconsider did not prevail.

"Ordered, that Mr. Harmer communicate to the House of Delegates the adoption of the resolution by the Senate.

"Mr. Harmer moved that the Senate adjourn until tomorrow, Thursday at 10 o'clock A. M.

"And,

"On that question,

"Mr. Coalter demanded the ayes and noes.

"The demand being sustained, they were ordered and taken as follows:

"The ayes were:

"Messrs. Sinsel (President), Bloch, Cobun, Dodson, Duty, Fox,

Harnet, Johnson, Kump, Morton, Poling, Sanders, Staats, Stewart and Vencill—15.

"The noes were:

"Messrs. Arnold, Burgess, Burr, Chapman, Coalter, Frazier, Gribble, Harman, Hough, Hunter, Lewis, Luther, Scheer and York—14.

114 "So a majority of the members present having voted in the affirmative, the motion to adjourn prevailed.

"Whereupon, the President declared that the Senate stood adjourned until tomorrow, Thursday, March 11, 1920, at 10 o'clock A. M.

Thursday, March 11, 1920.

"Mr. Poling, from the Joint Committee on Passed Bills (otherwise known as the Joint Committee on Enrolled Bills), submitted the following report, which was received:

"Your Joint Committee on Passed Bills (otherwise known as the Joint Committee on Enrolled Bills), have examined and found truly enrolled;

"(H. B. No. 16.)

"And,

"(H. J. R. No. 1)—'Ratifying the proposed amendment to the Constitution of the United States extending the right of suffrage to women.'

"Respectfully submitted,

"W. L. POLING,

"Chairman Senate Committee,

"W. R. GODFREY,

"Chairman House Committee,

"Mr. Poling, from the Joint Committee on Passed Bills (otherwise known as the Joint Committee on Enrolled Bills), submitted the following report, which was received:

"Your Joint Committee on Passed Bills (otherwise known as the Joint Committee on Enrolled Bills), report that on the 11th day of March, 1920, they presented to His Excellency, the Governor, the following resolution:

115 "(H. J. R. No. 1)—'Ratifying the proposed amendment to the Constitution of the United States, extending the right of suffrage to women.'

"Respectfully submitted,

"W. L. POLING,

"Chairman Senate Committee,

"W. R. GODFREY,

"Chairman House Committee,

"On motion of Mr. Fox, the Senate *adjourned sine die.*"

Journal of House of Delegates.

(This journal shows the House duly met and organized in pursuance of the same proclamation and received the same message and communication from the Governor relating to the suffrage amendment as were received by the Senate.)

Wednesday, March 3, 1920.

"House Joint Resolution No. 1—'Ratifying the proposed amendment to the Constitution of the United States, extending the right of suffrage for women.'

"Whereas, The Sixty-sixth Congress of the United States of America, in Congress assembled, in both houses, by a constitutional majority of two-thirds of each house thereof, has made the following proposition to amend the Constitution of the United States of America in the following words, to wit:

"Joint resolution—'Proposing an amendment to the Constitution, extending the right of suffrage to women.'

"Resolved, By the Senate and House of Representatives of the United States of America, in Congress assembled, two-thirds of each house concurring therein, that the following article is proposed as an amendment to the Constitution, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several states.

146

"Article —.

"The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex.

"Congress shall have power to enforce this article by appropriate legislation. Therefore, be it

"Resolved, by the Legislature of West Virginia: That the said proposed amendment to the Constitution of the United States of America be and the same is hereby ratified by the legislature of the State of West Virginia.

"Resolved, That certified copies of the foregoing preamble and resolution of ratification be forwarded by the Governor of the State of West Virginia to the President of the United States, to the Secretary of State of the United States, to the President of the United States Senate and to the Speaker of the United States House of Representatives.

"Was made a special order,

"The Clerk reported the resolution.

"Pending the discussion of the resolution,

"Mr. John moved the previous question,

"The question prevailing, the Speaker propounded the main question, 'Shall the resolution (H. J. R. No. 1) be adopted?'

"On that question, the Clerk called the roll.

"On the adoption of the resolution,

"The ayes were:

"Messrs. Anderson, Blackhurst, Bland, Blizzard, Brand, Brammer, Byrnes, Cuppett, Ferguson, Fitch, Fotney (of Harrison), Fortney (of Preston), Grove, Hamilton, Hays, Hendricks, Hersman, Hil-
leary, Hobbs, John, Jones, Kern, Mahan, Mollohan, Morris, Moulds, Musser, McPherson, Neal (of Webster), O'Connor, Otto, Peck, Rankin, Scott, Spangler, Starcher, Stover, Sturm, Taylor, Thomas, Twyman, Vaughn, Weiss, Williams (of Ohio), Williams (of
147 Pleasants), Wysong and Wolfe (Speaker)—47.

"The noes were:

"Messrs. Bannister, Bray, Capehart, Clements, Coberly, Coleman, Coon, Godfrey, Hackney, Hale, Hall, Harvey, Hickman, Houvouras, Howard, Kuykendall, Lantz, Lester, Miller, Moore, Moran, McCau-
ley, McClaren, McClintic, McDermitt, McVey, Neale (of Cabell), Nutter, Parsons, Pedigo, Perin, Pettigrew, Pridemore, Richards, Rouss, Shomo, Summers, Swisher, Thurmond and Vanmeter—40.

"Absent and not voting:

"Messrs. Calhoun, Cosner, Cox, Cunningham, Sarver and Shaw—6.

"So, a majority of all the members present and voting having voted in the affirmative the resolution (H. J. R. No. 1) was adopted.

"Pending the calling of the roll, when his name was called, Mr. Neal (of Cabell), said:

"In 1916, West Virginia gave a majority vote of 98,067 votes against woman suffrage. I want to ask the members of this honorable body if they think it is the proper thing for us to do, to ignore the 98,067 majority cast against suffrage and grant the request of the ladies that stand before us here today.

"I am perfectly willing if it can be done to submit this question to the voters of West Virginia for ratification or rejection, but I am not willing to say that the 98,067 voters of the State of West Virginia, by their votes cast less than four years ago, have all been converted to woman suffrage.

"In the face of these facts, I don't believe a legislative grant will stand the test of the higher courts, and as I look this matter squarely in the face I see danger ahead. I can see the radical element in the next few years filling our Senate and Congress chambers at Wash-
ton; then and not until then will the American people realize just
148 what the Democratic and the Republican National Com-
tee- have done by endorsing and working for woman suffrage."

"Ordered, That Mr. John communicate to the Senate the adoption by the House of resolution (H. J. R. No. 1) and request concurrence therein.

"On motion of Mr. Wysong, the House adjourned until Thursday, March 4th, 1920, at 2 o'clock p. m."

Thursday, March 11, 1920.

"A message from the Senate, by

"Mr. Harmer, announced the concurrence of that body in the adoption of

"House Joint Resolution No. 1—'Ratifying the proposed amendment to the Constitution of the United States, extending the right of suffrage to women.'"

On motion of Mr. Hays, the House Delegates adjourned sine die.

It is agreed that any other part of said Journals of the Senate and House of Representatives of West Virginia may be read from the printed book at the argument.

The petitioners further offered the Rules of the Senate of West Virginia, of which, Rules 52, 68 and 69 are as follows:

"52. The question being once determined, must stand as the judgment of the Senate, and cannot during the session be drawn again into debate unless reconsidered, and it shall be in order for any member voting with the prevailing side to move a reconsideration of the same within two succeeding business days.

"68. The Rules of Parliamentary Practice comprised in 'A Manual of General Parliamentary Law, with Suggestions for General Rules,' by Thos. B. Reed, shall govern the Senate in all cases not provided for by the rules of the Senate or in the Joint Rules of the Senate and House of Delegates. In any case not governed by the said Manual of said Rules, the Senate shall be governed by the practice in the Congress of the United States.

149 "69. No standing rule or order of the Senate shall be rescinded or changed without one day's notice being given of the motion therefor; and no rule shall be suspended except by a vote of two-thirds of all the members of the Senate present."

It is agreed that any other of said Senate Rules may be read from the printed rules at the argument. The petitioners further offered "Reed's Rules of Order," of which rules 183 and 184 are as follows:

Questions of Order.

"183. How Disposed Of.—Whenever the presiding officer or any member, calls attention to the fact that business is proceeding out of order, a correction can be made at once. If, however, the question of order be a disputed one, it is first decided by the presiding officer, subject to an appeal to the assembly.

"184. Manner of Raising and Deciding Points of Order.—Whenever any member thinks that the business of the assembly is going on contrary to proper order, he rises in his place and addresses the Chair, saying, 'Mr. Chairman: I rise to a point of order.' He is then asked to state his point of order, which he does. Thereupon either with or without debate, at the pleasure of the Chair, the presiding officer decides the question of order. If an appeal, which is debatable, be taken, then the question is put as follows: 'Shall the decision of the Chair stand as the judgment of the assembly?' If the point of order be overruled, then the business proceeds as before; if

sustained, then the order of action is changed to conform to the decision.

It is agreed that any other of said Rules may be read from the printed book at the argument.

The petitioners also offered in evidence over the objection of the Respondents certain decisions of the Supreme Court of Appeals of the State of West Virginia, to wit, decisions in the case of Osborne vs. Staley, 5th West Virginia 85, and Smith vs. Mitchell, 69 West Virginia 481, which it is agreed by counsel need not be printed in the record of this case, but may be read or referred to as contained
150 in the officially published West Virginia Reports.

"The petitioners also offered in evidence over the objection of the respondents certain decisions of the Supreme Court of the State of Tennessee, to wit, the decisions in the cases of

Brewer vs. Huntingdon, 86 Tenn. 732,

State vs. Algood, 87 Tenn. 163,

Webb vs. Carter, 129 Tenn. 182.

It is agreed that these decisions need not be printed in the record of this case, but may be read or referred to as contained in the officially published Tennessee Reports.

The petitioners further offered in evidence, over the objection of the Respondents certain correspondence between the Department of State of the United States and Miss Mary G. Kilbreth, President of the National Association Opposed to Woman Suffrage, and the Honorable Pat Harrison, United States Senator, as follows:

"National Association Opposed to Woman Suffrage.

"Headquarters,

"268 Madison Avenue, New York City.

"March 9, 1920.

"Hon. Frank L. Polk,

"Acting Secretary of State of the United States,

"Washington, D. C.

"DEAR SIR:

"In view of the fact that the U. S. Supreme Court will shortly render a decision on the pending case involving the legality of the Ohio Referendum we respectfully suggest that Ohio be not counted officially among the number of States which have ratified the Suffrage Amendment.

"We request that you inform the press that you will not count Ohio in the affirmative or issue any proclamation based thereon if to make up 36 it become necessary to count Ohio until after a decision by the Supreme Court in the Ohio case, nor will you
151 count any other State in the affirmative such as Oklahoma, New Mexico and Washington (in case the Legislatur of that

State ratifies if the time has not expired for legally invoking a referendum therein).

"We respectfully suggest that those like ourselves who believe in Home Rule are entitled to have the legislators in the States yet to vote know the real situation in regard to the referendum when they pass upon the question and we are confident you will treat us fairly in this matter and not attempt to foreclose a decision against us.

"Moreover, we call your attention to the fact that any proclamation not strictly legal might involve the Presidential election in a legal tangle and contest in view of which it would seem imperative that the Supreme Court should speak authoritatively in the pending case before any Executive decision is made.

"Please be kind enough to let me know whether or not you concur in the views I have set forth and especially if you take a different view of your official duty from that which I have suggested. Please do me the favor to advise me without delay so that we may be in a position to take such steps as may be necessary to have the question judicially determined.

"Respectfully yours,

"(Signed)

MARY G. KILBRETH,

"President,"

"Department of State,

"Washington,

"March 20, 1920,

"In reply refer to So 811,011/21.

"Miss Mary G. Kilbreth, President

"National Association Opposed to Woman Suffrage,

"726 14th Street, Washington, D. C.

"MADAM:

"This Department acknowledges the receipt of your letter of March 9, 1920, in which you request the Secretary of State
152 not to issue any proclamation declaring the Suffrage Amendment adopted if such proclamation is based upon the ratification by the States of Ohio, Oklahoma, New Mexico and Washington, until the Supreme Court of the United States shall have passed upon the legality of the Referendum provision of the Ohio State Constitution in the case of amendments to the National Constitution.

"Article V of the Constitution of the United States provides that amendments to that Constitution 'shall be valid to all intents and purposes, as parts of this Constitution, when ratified by the legislatures of three-fourths of the several states.'

"Section 205 of the Revised Statutes of the United States provides as follows:

"'Whenever official notice is received at the Department of State that any amendment proposed to the Constitution of the United States has been adopted, according to the provisions of the Constitution, the Secretary of State shall forthwith cause the amendment to

be published in the newspapers authorized to promulgate the laws, with his certificate, specifying the States by which the same may have been adopted, and that the same has become valid, to all intents and purposes, as a part of the Constitution of the United States.'

"You will have observed from the last quoted statute that whenever 'official notice' is received by this Department from the States that the amendment has been adopted 'the Secretary of State shall forthwith cause the amendment to be published.' The sufficiency of the action of any given State is not before this Department when an official notice from the proper authorities of the State has informed the Department that the amendment has been ratified by that particular state. Consequently, when a sufficient number of such notices have been received the Secretary of State is obliged 'forthwith' to publish the amendment.

"I am, Madam,

"Your obedient servant,

"(Signed)

ALVEY A. ADEE,

"Second Assistant Secretary."

153

"April 12, 1920.

"The Honorable Pat Harrison,

"United States Senate,

"Sir:

"I have the honor to acknowledge receipt of your letter of April 2, 1920, asking for copies of recent correspondence between the President of the Association Opposed to Woman Suffrage and this Department, relating to the proclamation of the nineteenth amendment.

"In reply to your request I enclose herewith copies of a letter from the President of the above Association, Miss Mary G. Kilbreth, dated March 20, 1920, and this Department's reply thereto of March 20, 1920.

"I have the honor to be, Sir,

"Your obedient servant,

"(Signed)

BAINBRIDGE COLBY.

"Enclosures:

From Miss Mary G. Kilbreth, March 20, 1920, and
Department's reply, March 20, 1920."

Evidence on Behalf of the Respondents.

The petitioners, having concluded their evidence, the respondents, to maintain the issues on their part, offered the following evidence.

The proclamation of the Secretary of State of the United States that the Nineteenth Amendment to the Constitution of the United States had been ratified by thirty-six states, being three-fourths of all the United States, and had become a part of the Constitution of the United States, as follows:

United States of America,

Department of State.

To all to whom these presents shall come, Greeting:

I Certify, That the document hereunto annexed is a true copy from the original in the archives of this Department.

(Secretary of State's Announcement that the Nineteenth Amendment has become valid as a part of the Constitution of the United States.—Signed August 26, 1920.)

In Testimony Whereof, I, Bainbridge Colby, Secretary of State, have hereunto caused the Seal of the Department of State to be affixed and my name subscribed by the Chief Clerk of the said Department, at the City of Washington, this 26th day of November, 1920.

[SEAL.]

BAINBRIDGE COLBY,

Secretary of State,

By BEN G. DAVIS,

Chief Clerk.

Bainbridge Colby, Secretary of State of the United States of America, to all to whom these presents shall come, Greeting:

Know Ye, That the Congress of the United States at the first session, Sixty-sixth Congress begun at Washington on the nineteenth day of May in the year one thousand nine hundred and nineteen, passed a Resolution as follows: to wit—

Join Resolution.

Proposing an Amendment to the Constitution Extending the Right of Suffrage to Women.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each
155 House concurring therein), That the following article is proposed as an amendment to the Constitution, which shall be valid to all intents, and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States.

"Article —.

"The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

"Congress shall have power to enforce this article by appropriate legislation."

And, further, that it appears from official documents on file in the Department of State that the Amendment to the Constitution of the United States proposed as aforesaid has been ratified by the Legislatures of the States of Arizona, Arkansas, California, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Washington, West Virginia, Wisconsin and Wyoming.

And, further, that the States whose Legislatures have so ratified the said proposed Amendment, constitute three-fourths of the whole number of States in the United States.

Now, therefore, be it known that I, Bainbridge Colby, Secretary of State of the United States, by virtue and in pursuance of Section 295 of the Revised Statutes of the United States, do hereby certify that the Amendment aforesaid has become valid to all intents and purposes as a part of the Constitution of the United States.

In Testimony Whereof, I have hereunto set my hand and caused the seal of the Department of State to be affixed.

Done at the City of Washington, this 26th day of August, in the year of our Lord one thousand nine hundred and twenty.

[SEAL]

BAINBRIDGE COLBY.

156 The Respondents then further offered in evidence a copy, bearing the certificate of the Secretary of State of the United States of America, of a resolution and a certificate thereto attached, which resolution and certificate relate to the said Nineteenth Amendment to the Constitution of the United States of America and which resolution and certificate were heretofore sent by the Executive of the State of West Virginia to the said Secretary of State of the United States of America and which resolution and certificate are as follows:

No. 3334.

United States of America,

Department of State.

To all to whom these presents shall come, Greeting:

I Certify, That the document hereto annexed is a true copy from the files and records of this Department.

Certified copy of the Joint Resolution of the Legislature of the State of West Virginia ratifying the Women Suffrage Amendment to the Constitution of the United States.

In Testimony Whereof, I Bainbridge Colby, Secretary of State, have hereunto caused the Seal of the Department of State to be affixed and my name subscribed by the Chief Clerk of the said De-

partment, at the City of Washington, this 13th day of December, 1920.

[SEAL.]

BAINBRIDGE COLBY,

Secretary of State,

By BEN G. DAVIS,

Chief Clerk.

Enrolled House Joint Resolution No. 1

(By Mr. John.)

Ratifying the Proposed Amendment to the Constitution of the United States Extending the Right of Suffrage to Women.

157 Whereas, the sixty-sixth congress of the United States of America, in congress assembled, in both houses, by a constitutional majority of two-thirds of each house thereof, has made the following proposition to amend the constitution of the United States of America in the following words, to-wit:

Joint Resolution

Proposing an Amendment to the Constitution Extending the Right of Suffrage to Women.

Resolved by the Senate and House of Representatives of the United States of America in congress assembled (two-thirds of each house concurring therein), That the following article is proposed as an amendment to the Constitution, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States,

"Article —.

"The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex.

"Congress shall have power to enforce this article by appropriate legislation."

Therefore, be it

Resolved, by the legislature of West Virginia: That the said proposed amendment to the constitution of the United States of America be and the same is hereby ratified by the legislature of the state of West Virginia.

Resolved, That certified copies of the foregoing preamble and resolution of ratification be forwarded by the governor of the state of West Virginia, to the president of the United States, to the secretary of state of the United States, to the president of the United

158 States senate and to the speaker of the United States house of representatives.

J. L. WOLFE,
Speaker of the House of Delegates.

C. L. TOPPING,
Clerk of the House of Delegates.

CHAS. H. SINSEL,
President of the Senate.

JOHN T. HARRIS,
Clerk of the Senate.

The within is approved this 13th day of March, 1920.

JNO. J. CORNWELL,
Governor.

Originated in the House. Takes effect — passage.

C. L. TOPPING,
Clerk of the House of Delegates.

C. L. TOPPING,
Clerk.

Correctly enrolled:

W. L. POLING,
Chairman Senate Committee.

W. R. GODFREY,
Chairman House Committee.

The Respondents then further offered in evidence a copy bearing the certificate of the Secretary of State of the United States of America, of a resolution and a certificate thereto attached, which resolution and certificate relate to the said Nineteenth Amendment to the Constitution of the United States of America and which resolution and certificate were heretofore sent by the Executive of the State of Tennessee to the said Secretary of State of the United States of America and which resolution and certificate are as follows:

159 No. 3336.

United States of America,
Department of State.

To all to whom these presents shall come, Greeting:

I Certify, That the document hereto annexed is a true copy from the files and records of this Department.

Certified copy of the Joint Resolution of the General Assembly of the State of Tennessee ratifying the Woman Suffrage Amendment to the Constitution of the United States.

In Testimony Whereof, I, Bainbridge Colby, Secretary of State, have hereunto caused the Seal of the Department of State to be affixed and my name subscribed by the Chief Clerk of the said Department, at the City of Washington, this 13th day of December 1920.

[SEAL.]

BAINBRIDGE COLBY,

Secretary of State,

By BEN G. DAVIS,

Chief Clerk,

Executive Chamber, Capitol, Nashville,

State of Tennessee.

I, A. H. Roberts, by virtue of the authority vested in me as Governor of the State of Tennessee, and also the authority conferred upon me therein, do certify to the President of the United States, to the Secretary of State of the United States at Washington, District of Columbia, to the President of the Senate of the United States, and to the Speaker of the House of Representatives of the United States, that the attached paper is a true and perfect copy of Senate Joint Resolution Number 1, ratifying an amendment to the Constitution of the United States, declaring that the rights of the Citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex, and that the Congress shall have power to enforce said article by appropriate legislation, as set out in said resolution; and that same was passed and adopted by the first extra session of the Sixty-first General Assembly of the State of Tennessee, constitutionally called to meet and convened at the Capitol, in the city of Nashville, on August 9, 1920, thereby ratifying said proposed Nineteenth Amendment to the said Constitution of the United States of America, in manner and form appearing on the Journals of the two houses of the General Assembly of the State of Tennessee, true, full and correct transcript of all entries pertaining to which said Resolution Number 1, are attached hereto and made part hereof.

In Witness Whereof, I have hereunto signed my name as Governor of the State of Tennessee, and have affixed hereto the Great Seal of the State of Tennessee, at the Capitol, in the city of Nashville, Tennessee, on this the twenty-fourth day of August, 1920, at 10:17 A. M.

[SEAL.]

(Signed)

A. H. ROBERTS,

Governor of the State of Tennessee,

Senate Joint Resolution No. 1.

A Joint Resolution ratifying a proposed amendment to the Constitution of the United States, providing that the right of citizens of the United States to vote, shall not be denied or abridged by the United States or by any state on account of sex, and providing

further that Congress shall have power to enforce this article by appropriate legislation.

Whereas, both houses of the Sixty-sixth Congress of the United States of America, at its first session, by a constitutional majority of two-thirds thereof, passed a resolution submitting to the several states a proposition to amend the Constitution of the United States, a certified copy of which has been received by the Governor of the State of Tennessee, from the Secretary of State of the United States, as required by law, and by him transmitted to this General Assembly, the same being in the following words, to wit:

161 Sixty-sixth Congress of the United States of America;
At the first Session.

Begun and held at the City of Washington on Monday, the nineteenth day of May, One Thousand Nine Hundred and Nineteen.

Joint Resolution

Proposing an Amendment to the Constitution Extending the Right of Suffrage to Women.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein). That the following article is proposed as an amendment to the Constitution, which shall be valid to all intents and purposes as a part of the Constitution when ratified by the Legislatures of three-fourths of the several states.

Article —.

"The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

"Congress shall have power to enforce this Article by appropriate legislation."

F. H. GILLETTE,

Speaker of the House of Representatives.

THOMAS R. MARSHALL,

Vice President of the United

States and President of Senate.

Be it resolved by the Senate of the State of Tennessee, the House of Representatives concurring, that said proposed amendment to the Constitution of the United States of America, be and the same is, hereby ratified by the General Assembly of the State of Tennessee.

Be it further resolved, That certified copies of the foregoing preamble and joint resolution be forwarded by the Governor of the State of Tennessee to the President of the United States, to the Secretary of State of the United States at Washington, District of Columbia, to the President of the Senate of the United States, and to the Speaker of the House of Representatives of the United States.

I certify that the foregoing is a true copy of Senate Joint Resolution Number One, the original of which is now in my possession as Clerk of the Senate of the first extra session of the Sixty-first General Assembly of Tennessee.

W. M. CARTER,
Clerk of the Senate.

*Transcript of the Senate Journal of the First Extra Session of the
61st General Assembly.*

Senate Joint Resolution No. 1, Relative to Ratifying the Nineteenth Amendment to the Constitution of the United States.

Tuesday, August 10, 1920.

Second Day.

The Senate met at 10 o'clock A. M., pursuant to adjournment, and was called to order by Mr. Speaker Todd.

The proceedings were opened with prayer by Senator Cannon.

On a call of the roll, all of the Senators responded to their names except Messrs. Candler, Coleman and Rice of Shelby.

On motion, the reading of the Journal was dispensed with. Mr. M. H. Copenhaver presented his certificate and was administered the official oath by Mr. Speaker Todd.

Introduction of Resolutions.

By Mr. Speaker Todd, Senate Joint Resolution No. 1, relative to ratifying the 19th Amendment to the Constitution of the United States.

Under the rule, the resolution lies over.

163

Wednesday, August 11, 1920.

Third Day.

The Senate met at 11 o'clock A. M., pursuant to adjournment, and was called to order by Mr. Speaker Todd.

The proceedings were opened with prayer by the Chaplain, Rev. Lin Cave.

On motion, the calling of the roll was dispensed with.

On motion, the reading of the Journal was dispensed with.

Mr. J. W. Murray, Senator-elect, presented his certificate, and was sworn in as Senator by Mr. Speaker Todd.

Resolutions Lying Over.

Senate Joint Resolution No. 1 relative to ratifying 19th Amendment.

Mr. Candler moved that the Resolution be referred to Committee on Judiciary.

Mr. Fuller raised the point of order that the question as to which committee the resolution should be referred to should be left entirely to the judgment of the Speaker. The Chair held that the point of order was not well taken, and that the motion to refer was in order.

Mr. Fuller moved that the motion to refer the Resolution to the Judiciary Committee be laid on the table and on the call of the roll the motion prevailed by the following vote:

Ayes.....	14
Noes.....	12

Senators voting "Aye" were: Messrs. Bradley, Burkhalter, Collins,openhaver, Dorris, Fuller, Gwin, Harber, Haston, Houk, McMahon, Matthews, Stockard and Wikle—14.

Senators voting "No" were: Messrs. Cameron, Candler, Coleman, Long, McFarland, Miller, Monroe, Murray, Parks, Rice of Stewart, Summers and Whitby—12.

64 The resolution was referred to the Committee on Constitutional Amendments.

Friday, August 13, 1920.

Fifth Day.

The Senate met at 10.30 A. M. o'clock, pursuant to adjournment, and was called to order by Mr. Speaker Todd. The proceedings were opened with prayer by the Chaplain, Rev. R. Lin Cave.

On call of the roll, all of the Senators responded to their names, except: Messrs. Caldwell, Clarke, Gwin, McFarland and Monroe.

On motion, the reading of the Journal was dispensed with.

Report of Standing Committees.

Constitutional Amendments.

Mr. Gwin presented the majority report signed by Messrs. Gwin,openhaver, Houk, Collins, Murray, Coleman, Wikle and Haston, on Senate Joint Resolution No. 1, as follows:

To the Speaker and Members of the Senate:

The Committee on Constitutional Amendments has carefully considered Senate Joint Resolution No. 1, and is of the opinion that the present Legislature has both a legal and moral right to ratify the proposed resolution.

Full power and jurisdiction of the question is conferred upon State Legislatures by the Fifth Article of the Federal Constitution. This power is not conferred upon some and withheld from others, but is granted to all, and any legislature may lawfully exercise the power thus expressly conferred. Therefore, the provision of the Constitution of Tennessee which undertakes to deny to the present

Legislature the right to exercise such power is clearly null and void because in direct conflict with the United States Constitution. The attempt to deny this Legislature this power is not only without legal force and effect, but is clearly not binding as a moral obligation. To contend that an illegal provision of a State Constitution imposes a duty or creates a moral obligation is to state a proposition that is manifestly and fundamentally wrong. The United States Constitution is the supreme law of the land and it is, therefore, no violation of his official oath for any legislator to disregard a State Constitutional inhibition that is in direct and irreconcilable conflict with the plain provision of the Federal Constitution. On the contrary, to be governed by a nugatory clause of the State Constitution on a purely Federal question,—and that is what the 19th Amendment is,—would be dangerously near the violation of the oath to support the Constitution of the United States. Legal opinions and common sense arguments could be multiplied in support of this position, but these are deemed unnecessary.

In view of the fact that all the members of the Senate are either Democrats or Republicans, and that both nominees and platforms of their respective parties, State and National, have unequivocally declared for the ratification of this Amendment, and that its final adoption is as certain as the recurrence of the seasons, and the further fact that this Senate has heretofore taken a stand in favor of woman suffrage by the enfranchisement as far as was legally possible of the womanhood of Tennessee, we have not considered it necessary to state the many good reasons that might be urged in favor of the adoption of the Amendment.

National Woman Suffrage by Federal amendment is at hand; it may be delayed, but it cannot be defeated, and we covet for Tennessee the signal honor of being the 36th and last State necessary to consummate this great reform.

Fully persuaded of its justice and confident of its passage, we earnestly recommend the adoption of the resolution.

Respectfully submitted,

(Signed)

L. E. GWIN,

Chairman.

M. H. COPENHAVER.

JOHN C. HOUK.

J. W. MURRAY.

T. L. COLEMAN.

DOUGLAS WIKLE.

E. N. HASTON.

166 Mr. Cameron presented the minority report of Messrs. Cameron and Rice of Stewart, as follows:

To the Speaker and Members of the Senate:

The undersigned members of the committee, make to your honorable body the following minority report and recommendations:

That the body refuse to act upon Senate Joint Resolution, we being of opinion that the present legislature has no right nor authority to act thereon at all, and that the same should be deferred to the succeeding legislature.

We, therefore, dissent from the recommendation of the majority and recommend in lieu, that no action upon the subject be taken at this special session.

Respectfully submitted,

(Signed)

J. W. RICE.

W. M. CAMERON.

Mr. Cameron made a motion to adopt the minority report.

Mr. Haston made a motion to table the motion to adopt the minority report.

On a call of the roll, the result on the motion to table was as follows:

Ayes.....	23
Noes.....	10

Senators voting "Aye" were: Messrs. Bradley, Burkhalter, Caldwell, Carter, Coleman, Collins, Copenhaver, Dorris, Fuller, Gwin, Harber, Haston, Hill, Houck, McMahon, Matthews, Monroe, Murray, Patton, Rice of Shelby, Stockard, Wikle and Mr. Speaker Todd—23.

Senators voting "No" were: Messrs. Cameron, Candler, Clarke, Long, McFarland, Miller, Parks, Rice of Stewart, Summers and Whitby—10.

Mr. Haston made a motion to adopt the majority report. The motion prevailed.

167

Resolutions Lying Over.

Senate Joint Resolution No. 1 relative to ratifying proposed 19th amendment to the United States Constitution. Mr. Haston made a motion to adopt the resolution. Mr. McFarland made the point of order in writing, as follows:

Mr. Speaker: I make the point of order that the Senate has no right or authority to act upon the proposed amendment to the Federal Constitution, under the Constitution of the State of Tennessee, Article No. 2, Section 32.

McFARLAND.

The Speaker's ruling on the above point of order is as follows:

On the point of order made by the Senator from Wilson, the Speaker rules that it is not in the province of the speaker to determine or pass upon the authority or power of the Senate to act under the Constitution to consider this proposed amendment, but that this is a question for the body to determine.

Point of order overruled.

Mr. McFarland appealed from the ruling of the chair.

Mr. Speaker Todd called Mr. Hill to the chair, who put the question to the Senate as follows: Shall the ruling of the Chair be sustained?

Mr. Gwin made the following point of order: That discussion must be confined to the appeal from the ruling of the Chair and that it was not in order to discuss the constitutionality of the resolution.

The Chair ruled that the point of order was well taken.

On the call of the roll the chair was sustained by the following vote:

Ayes	27
Noes	5

Senators voting "Aye" were: Messrs. Bradley, Burkhalter, Caldwell, Cameron, Carter, Clarke, Coleman, Collins, Copenhaver, Dorris, Fuller, Gwin, Harber, Haston, Hill, Houk, Long, McMahon, 168 Matthews, Miller, Monroe, Murray, Parks, Patton, Rice of Shelby, Stockard and Wikle—27.

Senators voting "No" were: Messrs. Candler, McFarland, Rice of Stewart, Summers and Whitby—5.

Mr. Haston renewed his motion on the adoption of the resolution. The motion prevailed.

On call of the roll, the resolution was adopted by the following vote:

Ayes	25
Noes	4
Present not voting	2

Senators voting "Aye" were: Messrs. Bradley, Burkhalter, Caldwell, Carter, Coleman, Collins, Copenhaver, Dorris, Fuller, Gwin, Harber, Haston, Hill, Houk, Long, McMahon, Matthews, Monroe, Murray, Patton, Rice of Shelby, Stockard, Whitby, Wikle and Mr. Speaker Todd—25.

Senators voting "No" were: Messrs. Candler, Parks, Rice of Stewart, and Summers—4.

Senators present and not voting were: Messrs. McFarland and Miller—2.

A motion to reconsider was laid on the table.

Explanations.

Mr. Speaker: I refuse to vote on the proposed Federal Amendment from the fact that I am not inclined to perjure myself by violating what I consider my solemn oath.

(Signed)

LON P. MCFARLAND.

Explanation of Mr. Dorris follows:

Explanation of Mr. Dorris of his vote on Senate Joint Resolution No. 1 on the ratification of the Woman Suffrage Amendment to the Federal Constitution.

169 Several months ago when it became apparent that the Legislature would be called together in extra session to act upon some vital matters, it also became apparent that the 19th Amendment to the Federal Constitution, giving women the right of suffrage, would be included.

Being in favor of woman suffrage, I set about the task of working out for myself the question as to whether I would be violating my oath to the State if I voted for the amendment at this time. In trying to arrive at a conclusion, I finally worked out the solution in my own mind, basing my opinion on this construction:

"The Constitution of the United States when adopted and ratified by the States was complete within itself, and no other instrument of any kind not adopted by the same power or ratified by the states could in any way modify or control it."

The United States Supreme Court in deciding the recent case of Hawkes vs. Smith, among other things, said:

"It is true that the power to legislate in the enactment of the laws of the state is derived from the people of the state. But the power to ratify a proposed amendment to the Federal Constitution has its source in the Federal Constitution. The act of ratification by the state derives its authority from the Federal Constitution to which the state and its people have alike assented."

It is held by many that the present legislature could not legally ratify the amendment without violating their oath to the Constitution of Tennessee. The Constitution of Tennessee, Sec. 32, Art. II, specifically states:

"No Convention or General Assembly of this State shall act upon any amendment of the Constitution of the United States proposed by Congress to the several States, unless such Convention or General Assembly shall have been elected after such amendment is submitted."

When we follow the Constitution of Tennessee, there is only one construction that can be placed upon this point, and that is that

170 it was clearly in the minds of the framers of the Constitution of 1870 that all amendments to the Federal Constitution

hereafter submitted should be ratified by the vote of the people, either by election to the General Assembly or by a convention which is equivalent to a referendum by the people. This the Supreme Court of the United States clearly set out in the Hawkes vs. Smith decision could not be done. On this point the Court said:

"The Constitution of Ohio, in its present form, although making provision for a referendum, vests the legislative power primarily in

a General Assembly consisting of a Senate and House of Representatives. Article II, Section 1, provides:

'The legislative power of the State shall be vested in a general assembly consisting of a Senate and House of Representatives, but the people shall reserve to themselves the power to propose to the General Assembly laws and amendments to the Constitution, and to adopt or reject the same at the polls on a referendum vote as hereinafter provided.'

The argument to support the power of the State to require the approval by the people of the State of the ratification of amendments to the federal constitution through the medium of a referendum rests upon the proposition that the federal constitution requires ratification by the legislative action of the States through the medium provided at the time of the proposed approval of the amendment. This argument is fallacious in this—ratification by a state of a constitutional amendment is not an act of legislation within the proper sense of the word. It is but the expression of the assent of the State to a proposed amendment."

Therefore, when Sec. 32, Article II, was written into the Constitution of Tennessee, the framers wrote a clause that was null, void, and non-existent.

And with this view of the question, I have been able to reach the conclusion that I would not be violating my oath to the State when I cast my vote to ratify the amendment, and I therefore vote "Aye."

FINLEY M. DORRIS.

171

Monday, August 16, 1920.

Eighth Day.

The Senate met at 2 o'clock P. M., pursuant to adjournment, and was called to order by Mr. Speaker Todd.

The proceedings were opened with prayer by the Chaplain, Rev. R. Lin Cave.

On a call of the roll, all of the Senators responded to their names, except Messrs. Bradley, Fuller and Long.

Mr. McFarland reported that Mr. Bradley was absent on account of illness.

On motion, the reading of the Journal was dispensed with.

Enrolled Bills.

Committee on Enrolled Bills.

Mr. Speaker: Your Committee on Enrolled Bills beg leave to report that we have carefully examined Senate Joint Resolution No. 1, and find same correctly engrossed and ready for transmission to the House.

SUMMERS,
Chairman.

Monday, August 16, 1920.

Eighth Day.

The House met at 2 P. M. and was called to order by Mr. Speaker Walker.

Proceedings were opened with prayer by the Chaplain, Rev. R. V. Cawthon.

On a call of the roll 98 members were found to be present.

The absent member was Mr. Harris of Wilson.

On motion the reading of the Journal was dispensed with.

172

Message from the Senate.

Mr. Speaker: I am directed to transmit to the House, Senate Joint Resolution for signature of the Speaker of the House, also Senate Joint Resolution No. 1, relative to the 19th Amendment to the Constitution.

Tuesday, August 17, 1920.

Ninth Day.

The House met at 10:30 A. M. and was called to order by Mr. Speaker Walker.

Proceedings were opened with prayer by the Chaplain, Rev. R. V. Cawthon.

On a call of the roll 96 members were found to be present.

The absent members were Messrs. Brooks and Rowan, who were excused, and Mr. Harris of Wilson.

On motion, the reading of the Journal was dispensed with.

Resolutions Lying Over.

Senate Joint Resolution No. 1, relative to ratifying the 19th Amendment.

Pending consideration, Mr. Overton presiding, Mr. Walker moved to adjourn until 10 A. M. tomorrow.

The motion prevailed by the following vote:

Ayes	52
Noes	44

Representatives voting Aye were: Messrs. Bond, Boyd, Boyer, Bratton, Burns, Carter, Carr, Cassady, Check, Cole, Crawford, of Fayette, Dunlap, Francisco, Frogge, Gilbreath, Hall, Harvill, Hays, Hickman, Jackson, Keisling, Leath, Long, Martin of Hamilton, McCalmann, McMurray, Millican, Montgomery, Moore, Norville, Oldham, Overton, Phelan, Rucker, Russell, Sharpe, Sipes, Skidmore, Smith, Story, Swift, Travis of Franklin, Turner, Vinson, Weldon, L. M. Whittaker, M. E. Whittaker, Whitfield, Wilson, Wonfenbarger, Womack and Mr. Speaker Walker—52.

Representatives voting No were: Messrs. Anderson, Bell, Brooks, Canale, Crawford of Bedford, Davis, Dodson, Dowlen, Ellis, Fisher, Fitzhugh, Forsythe, Griffin, Hanover, Harris, of Knox, Howard, Jeter, Johnson, Kahn, Keaton, Larsen, Light, Longhurst, Luther, Lynn, Martin, of Washington, Miller, Morgan, Moose, Odle, Phillips, of Hawkins, and Phillips, of Madison, Rector, Riddick, Shoaf, Simpson, of Bradley, Simpson, of Humphreys, Stovall, Swink, Tarrant, Thronesbury, Travis, of Henry, Tucker and Wade—44.

Wednesday, August 18th, 1920.

Tenth Day.

The House met at 10 A. M. and was called to order by Mr. Speaker Walker.

The proceedings were opened with prayer by the Chaplain, Rev. R. V. Cawthon.

On a call of the roll 96 members were found to be present.

The absent members were: Messrs. Brooks, and Rowan, who were excused, and Harris, of Wilson.

On motion the reading of the Journal was dispensed with.

Unfinished Business.

Senate Joint Resolution No. 1, relative to ratification of the 19th Amendment.

Mr. Walker, Mr. Overton presiding, moved that the resolution be tabled.

The motion failed for the want of majority by the following vote:

Ayes	48
Noes	48

174 Representatives voting Aye were: Messrs. Bond, Boyer, Boyd, Bratton, Burn, Carter, Cassady, Check, Cole, Crawford, of Fayette, Dunlap, Forsythe, Francisco, Frogge, Gilbreath, Hall, Harvill, Hayes, Jackson, Keisling, Long, Martin, of Hamilton, Mc Murray, Millican, Montgomery, Moore, Norville, Oldham, Overton, Rucker, Russell, Sharpe, Sipes, Skidmore, Smith, Story, Swift, Thronesbury, Travis, of Franklin, Vinson, Weldon, L. M. Whittaker, M. E. Whittaker, Whitfield, Wilson, Wolfenbarger, Womack, and Speaker Walker—48.

Representatives voting No were: Messrs. Anderson, Bell, Canale, Carr, Crawford, of Bedford, Davis, Dodson, Dowlen, Ellis, Fisher, Fitzhugh, Foster, Griffin, Hanover, Harris of Knox, Hickman, Howard, Jeter, Johnson, Kahn, Keaton, Larsen, Leath, Light, Longhurst, Luther, Lynn, Martin, of Washington, McCalman, Miller, Morgan, Moose, Odle, Phelan, Phillips, of Hawkins, and Phillips, of Madison, Rector, Riddick, Shoaf, Simpson, of Bradley, Simpson, of Humphreys, Stovall, Swink, Tarrant, Travis, of Henry, Tucker, Turner and Wade—48.

Thereupon the resolution was concurred in, and adapted by the following vote:

Ayes	50
Noes	46

Representatives voting Aye were: Messrs. Anderson, Bell, Burn, Canale, Carr, Crawford, of Bedford, Davis, Dodson, Dowlin, Ellis, Fisher, Fitzhugh, Foster, Griffin, Hanover, Harris, of Knox, Hickman, Howard, Jeter, Johnson, Kahn, Keaton, Larsen, Leith, Light, Longhurst, Luther, Lynn, Martin, of Washington, McCallman, Miller, Morgan, Moose, Odle, Phelan, Phillips, of Hawkins, Phillips, of Madison, Rector, Riddick, Shoaf, Simpson, of Bradley, Simpson, of Humphrey, Stovall, Swink, Tarrant, Travis, of Henry, Tucker, Turner, Wade, Mr. Speaker Walker—50.

Representatives voting No were: Messrs. Bond, Boyd, Boyer, Bratton, Carter, Cassady, Cheek, Cole, Crawford, of Fayette, Dunlap, Forsythe, Francisco, Frogge, Gilbreath, Hall, Harvell, Hayes, Jackson, Keisling, Long, Martin, of Hamilton, McMurray, Milligan, Montgomery, Moore, Norvill, Oldham, Overton, Rucker, Russell, Sharpe, Sipes, Skidmore, Smith, Story, Thronsberry, Travis, of Franklin, Vincent, Weldon, L. M. Whittaker, M. E. Whitaker, Whitfield, Wilson, Wolfenbarger, and Womack—46.

Explanations.

Messrs. Cassady and Hall offered explanations which were spread charge upon the Journal.

Mr. Walker (Mr. Overton presiding), changed his vote from No to Aye, and entered a motion on the Journal to reconsider.

Saturday, August 21, 1920.

Thirteenth Day.

The House met at 10 a. m. Was called to order by Mr. Speaker Walker. The proceedings were opened with prayer by the Chaplain, Rev. R. B. Cawthon.

Mr. Riddick moved that the call of the roll be dispensed with. The motion prevailed.

Mr. Montgomery made the point of order that no quorum was present, and demanded roll call.

On a call of the roll the following members were found to be present:—Messrs. Anderson, Bell, Bond, Boyer, Brooks, Burns, Canale, Carr, Cassady, Crawford, of Bedford, Davis, Dodson, Dowlin, Ellis, Fisher, Fitzhugh, Forsythe, Foster, Frogge, Griffin, Hanover, Harris, of Knox, Hickman, Howard, Jeter, Johnson, Kahn, Keaton, Larsen, Leith, Light, Longhurst, Luther, Lynn, Martin, of Washington, Martin, of Hamilton, McCallman, Miller, Montgomery, Morgan, Moose, Odle, Phelan, Phillips, of Hawkins, Phillips, of Madison, Rector, Riddick, Shoaf, Simpson, of Bradley, Simpson, of Hum-

phreys, Stovall, Swink, Tarrant, Thronesberry, Travis, of Henry, Tucker, Turner, Wade, and Mr. Speaker Walker—59.

Mr. Odle moved that the Speaker prepare a list of the absentees and give same to the Sergeant-at-Arms, with the request that he go out and arrest any and all absent members and bring them into the house.

176 Before the motion was put, Mr. Speaker Walker announced that under the rules of the house, such action on his part was necessary, and instructed the Sergeant-at-Arms to secure a list of the absent members, and if possible, bring the members to the House.

On motion of Mr. Riddick, at 10:30 a. m., the House recessed for one hour. At the expiration of the recess, the House was called to order by Mr. Speaker Walker.

Mr. Riddick offered the following written motion.

Mr. Speaker, I call from the Journal the motion to reconsider Senate Joint Resolution No. 1.

Mr. Speaker Walker ruled the motion out of order, for the following reasons:

1. Because the roll call shows no quorum present. Section 2 of Article 2 of the Constitution of the State provides, in part: "Not less than two-thirds of all the members to which each house shall be entitled shall constitute a quorum to do business, but a small number may adjourn from day to day, and may be authorized by law, to compel the attendance of absent members."

2. Because the Attorney-General of the State has held that it was only necessary for a majority of the members present constituting a quorum to ratify the 19th Amendment. If it requires a quorum to pass on the question of ratification, certain it is that a quorum must be present to reconsider.

3. STATE OF TENNESSEE:

To A. H. Roberts, Governor of the State of Tennessee; Ike B. Stevens, Secretary of the State of Tennessee; A. L. Todd, Speaker of the Senate of the General Assembly of the State of Tennessee; Seth Walker, Speaker of the House of Representatives of the State of Tennessee, and their counsellors, attorneys, solicitors and agents, and each and every one of them, Greetings:

Whereas, in a certain suit instituted in Part 2, of our Court of Chancery at Nashville, by C. Runcie Clements, Rufus E. Fort, Edward Buford, Dudley Gale, Jas. A. Yowell, A. S. Warren and George

177 Washington, complainants against A. H. Roberts, Ike B. Stevens, A. L. Todd and Seth Walker, defendants, the complainants having obtained from Honorable F. C. Langford, Judge, a fiat for a writ of injunction to issue to enjoin defendants A. H. Roberts Governor of the State of Tennessee, Ike B. Stevens, Secretary of State; A. L. Todd, Speaker of the Senate of the General Assembly of the State of Tennessee; Seth Walker, Speaker of the House of Representatives of the General Assembly of the State of Tennessee, and each of them, from making, signing, or issuing any proclama-

tion, declaration, resolution, or certificate, declaring that the State of Tennessee has constitutionally and legally adopted the proposed 19th Amendment to the Constitution of the United States, and from further taking any official action with reference to the illegal action of the Special Session of the General Assembly of the State of Tennessee, purporting to ratify and adopt said 19th Amendment to the Constitution of the United States; and

The complainants having executed the bond required by the said fiat. We, Therefore, in consideration of the premises aforesaid, do strictly enjoin and command you, the said A. H. Roberts, Ike B. Stevens, A. L. Todd and Seth Walker, in their official capacities—set forth above, and all and every person before mentioned under the penalty prescribed by law of your and every of your goods, lands, tenements, to be levied to our use that you and every one of you do absolutely desist from doing any of the things above forbidden, restrain and enjoin—until hearing of this cause in our said Courts of Chancery.

Witness, Joseph R. West, Clerk and Master, of our said Court, at office the first Monday in April in the year of our Lord, 1920, and in the 144th year of our Independence.

(Signed)

JOSEPH R. WEST,

Clerk and Master,

By C. H. SWAN,

Deputy Clerk and Master.

178 Mr. Riddick appealed from the decision of the chair.

The Chair (Mr. Odle presiding) stated that the question was whether or not the chair should be sustained in its ruling.

On a call of the roll, the House refused to sustain the decision of the chair by the following vote:

Ayes	8
Noes	49
Present and not voting	1

Representatives voting Aye were: Messrs. Bond, Boyer, Cassady, Forsythe, Frogge, Martin of Hamilton, Montgomery and Thronesberry—8.

Representatives voting No were: Messrs. Anderson, Bell, Brooks, Burns, Canale, Carr, Crawford of Bedford, Davis, Dodson, Dowlin, Ellis, Fisher, Fitzhugh, Foster, Griffin, Hanover, Harris of Knox, Hickman, Howard, Jeter, Johnson, Kahn, Keaton, Larsen, Leath, Light, Longhurst, Luther, Lynn, Martin of Washington, McCallman, Miller, Morgan, Moose, Odle, Phelan, Phillips of Hawkins, Phillips of Madison, Rector, Riddick, Shoaf, Simpson of Bradley, Simpson of Humphreys, Stovall, Swink, Tarrant, Travis of Henry, Tucker and Wade—49.

The Representative present and not voting was Mr. Speaker Walker.

Mr. Riddick offered the following written motion:

Mr. Speaker: I move you that the House now reconsider its action in concurring in the adoption of Senate Joint Resolution No. 1.

Mr. Walker (Mr. Odle presiding) made the point of order that no quorum was present and demanded a roll call.

The chair (Mr. Odle presiding) stated that he would first have a roll call on Mr. Riddick's motion and after that was disposed of would order a roll call on the demand of Mr. Walker that a quorum was not present.

Mr. Walker again demanded a roll call on the point of order that no quorum was present.

179 The Chair (Mr. Odle presiding) stated that there was a motion before the House and that a roll call on Mr. Walker's demand that no quorum was present would be ordered immediately after the motion of Mr. Riddick was disposed of.

Thereupon the motion of Mr. Riddick that the House reconsider its action in concurring in and adopting Senate Joint Resolution No. 1, failed by the following vote:

Ayes	9
Noes	50
Present and not voting.....	9

Representatives voting were: Messrs. Anderson, Bell, Brooks, Burns, Canale, Crawford of Bedford, Davis, Dodson, Dowlen, Ellis, Fisher, Fitzhugh, Foster, Griffin, Hanover, Harris of Knox, Hickman, Howard, Jeter, Johnson, Kahn, Keaton, Larsen, Leath, Light, Longhurst, Luther, Lynn of Washington, McAlunan, Miller, Morgan, Moose, Odle, Pheland, Phillips of Hawkins, Phillips of Madison, Rector, Riddick, Shoaf, Simpson of Bradley, Simpson of Humphrey, Stovall, Swink, Tarrant, Travis of Henry, Tucker, Turner and Wade—50.

Representatives present and not voting were: Messrs. Bond, Boyer, Cassady, Forsythe, Frogge, Martin of Hamilton, Montgomery, Thronberry and Mr. Speaker Walker—9.

Mr. Walker (Mr. Odle presiding) made the point of order that Mr. Odle was only acting as Speaker by his request and was therefore enjoined from putting any motion before the house.

Mr. Riddick offered the following written motion:

Mr. Speaker: I move you that the Clerk of this House be, and he is hereby instructed to transmit to the Senate through the ordinary procedure Senate Joint Resolution No. 1.

On a vive voce vote the Chair (Mr. Odle presiding) declared the motion carried.

On motion of Mr. Riddick, the House adjourned until 3 P. M. Monday.

180 Mr. Speaker: I am directed to return to the Senate—Senate Joint Resolution No. 1, relative to ratifying the 19th Federal Amendment:

By the following written motion:

Mr. Speaker: I move you that the Clerk of the House be, and he is hereby instructed to transmit to the Senate through the ordinary procedure Senate Joint Resolution No. 1.

The Respondents then further offered in evidence a copy bearing the certificate of the Secretary of State of the United States of

America, of a resolution and a certificate thereto attached, which resolution and certificate relate to the said Nineteenth Amendment to the Constitution of the United States of America and which resolution and certificate were heretofore sent by the Executive of the State of Connecticut to the said Secretary of State of the United States of America and which resolution and certificate are as follows:

No. 3335.

United States of America,
Department of State.

To all to whom these presents shall come, Greeting:

I certify, That the document hereto annexed is a true copy from the files and records of this Department.

Certified copy of the Joint Resolution of the General Assembly of the State of Connecticut ratifying the Woman Suffrage Amendment to the Constitution of the United States.

In testimony whereof, I, Bainbridge Colby, Secretary of State, have hereunto caused the Seal of the Department of State to be affixed and my name subscribed by the Chief Clerk of the said Department, at the City of Washington, this 13th day of December, 1920.

[SEAL.]

BAINBRIDGE COLBY,

Secretary of State,

By BEN G. DAVIS,

Chief Clerk.

181 STATE OF CONNECTICUT,
Office of the Secretary, ss:

I, Frederick L. Perry, Secretary of the State of Connecticut, and keeper of the seal thereof, and of the original record of the Acts and Resolutions of the General Assembly of said State, Do Hereby Certify that I have compared the annexed copy of the concurrent resolution ratifying the proposed amendment to the Constitution of the United States on woman suffrage with the original record of the same now remaining in this office, and have found the said copy to be a correct and complete transcript thereof.

And I Further Certify, That the said original record is a public record of the said State of Connecticut, now remaining in this office.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of said State, at Hartford, this 14th day of Sept., 1920.

[SEAL.]

FREDERICK L. PERRY,

Secretary,

State of Connecticut,

General Assembly,

Special Session, Sept. 14th, 1920.

*Concurrent Resolution Ratifying the Proposed Amendment to the
Constitution of the United States on Woman Suffrage.*

Whereas, The Sixty-sixth Congress of the United States of America, in both Houses by a constitutional majority of two-thirds thereof has made the following proposition to amend the Constitution of the United States, in the following words, to wit:

Joint Resolution

Proposing an Amendment to the Constitution Extending the Right
of Suffrage to Women.

Resolved, by the Senate and House of Representatives of
182 the United States of America, in Congress assembled, two-
thirds of each house concurring therein, that the following
article is proposed as an Amendment to the Constitution, which shall
be valid to all intents and purposes as part of the Constitution when
ratified by the Legislatures of three-fourths of the several states.

Article XIX.

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

Therefore be it

Resolved, by the General Assembly of the State of Connecticut that the said proposed amendment to the Constitution of the United States of America be and the same is hereby ratified by the General Assembly of the State of Connecticut.

Resolved, that certified copies of the foregoing preamble and resolution be forwarded by the Governor of the State of Connecticut to the President of the United States, the Secretary of State of the United States, the President of the Senate of the United States and the Speaker of the House of Representatives of the United States.

House of Representatives, Passed September 14, 1920.

Senate, Passed September 14, 1920.

CLIFFORD B. WILSON,

President of the Senate,

JAS. F. WALSH,

Speaker of the House.

Certified as correct by

FREDERICK L. PERRY,

Secretary.

183 *Testimony on Behalf of Petitioners in Rebuttal.*

The respondents having concluded their evidence, the petitioners in rebuttal offered the following evidence, over the objection of the respondents as to its relevancy, to wit:

A copy of the proceedings in the Legislature of Tennessee as filed with and certified by the Secretary of State of the United States of America subsequent to the proceedings mentioned in the certificate relating to the actions of the General Assembly of Tennessee offered on behalf of the respondents, as follows:

No. 3381.

United States of America,

Department of State.

To all to whom these presents shall come, Greeting:

I Certify, That the document hereto annexed — a true copy from the files and records of this Department.

Certified copy of the House Journal of the Sixty-first General Assembly of the State of Tennessee, in Extraordinary Session assembled, with reference to each and every proceeding had on Senate Joint Resolution No. 1—Relative to ratifying the 19th Amendment, on August 31st, 1920, and each and every proceeding had thereafter.

In Testimony Whereof, I, Bainbridge Colby, Secretary of State, have hereunto caused the Seal of the Department of State to be affixed and my name subscribed by the Chief Clerk of the said Department, at the City of Washington, this 16th day of December, 1920.

[SEAL.]

BAINBRIDGE COLBY,

Secretary of State,

By BEN G. DAVIS,

Chief Clerk.

184

Sept. 7, 1920.

Secretary of State:

I, A. H. Roberts, Governor of the State of Tennessee, at the request of the House of Representatives of said State, do hereby certify that the attached paper is a full true, and correct copy or transcript of all entries appearing on the Journal of the House of Representatives of the State of Tennessee, on the respective dates specified therein, relative to the action of the said House of Representatives upon Senate Joint Resolution Number 1, pertaining to the Nineteenth Amendment to the Constitution of the United States, at the extraordinary session of the Sixty-first General Assembly of the State of Tennessee, constitutionally called and convened at the Capitol at

Nashville, on August 9, 1920; and I do further certify that John Green is the Clerk of the House of Representatives, and that as such, he is the custodian of the Journal of said House of Representatives, and under the Constitution and laws of Tennessee, has authority to make copies of said Journal, and to certify to the correctness of the same, and that his signature thereto is genuine.

In Witness Whereof, I have hereunto signed my name as Governor of the State of Tennessee, and have affixed hereto the Great Seal of the State of Tennessee, at the Capitol, in the City of Nashville, on this the 3rd day of September, 1920.

[SEAL.]

A. H. ROBERTS,

Governor of the State of Tennessee.

Tuesday, August 31, 1920.

Twenty-third Day.

The House met at 10.30 A. M. and in the absence of Mr. Speaker Walker, was called to order by Chief Clerk Green.

The proceedings were opened with prayer by the Chaplain, Rev. R. V. Cawthon.

On a call of the roll 48 members were found to be present, 185

The absent members were: Messrs. Bell, Boyd, Boyer, Bratton, Canale, Carter, Cassady, Cheek, Cole, Crawford (of Fayette), Davis, Dunlap, Forsythe, Francisco, Frogge, Gilbreath, Hall, Harris (of Wilson), Harville, Hays, Howard, Jackson, Keisling, Long, Luther, Martin (of Washington), McCalman, McMurray, Miller, Millican, Moore, Norvell, Oldham, Rowan, Rucker, Shappe, Sipes, Skidmore, Smith, Story, Swift, Travis (of Franklin), Vinson, Weldon, L. M. Whitaker, M. E. Whitaker, Whitfield, Wilson, Wolfenbarger, Womack and Mr. Speaker Walker—51.

On motion of Mr. Keaton the House stood at ease until 2 P. M. today.

At the hour of 2 P. M. the House was called to order by Mr. Speaker Walker.

On a call of the roll 91 members were found to be present.

The absent members were: Messrs. Canale, Davis, Harris (of Wilson), Luther, Martin (of Washington), Miller, Rowan, and Sipes.

On motion the reading of the Journal was dispensed with.

Mr. Hall offered the following written motion:

Mr. Speaker: I move that each and every motion and proceeding appearing on pages 237-238-239-240-241-242 of the Journal of the Lower House of Tennessee of the 61st General Assembly in extraordinary session assembled has on August 21st, 1920, save and except the roll call showing no quorum to be present and the points of order made and the rulings thereon be expunged from the Journal.

Mr. Riddick made the following point of order:

Mr. Speaker: I rise to a parliamentary inquiry and ask: Is a motion in order which proposes to reconsider Senate Joint Resolution

Number 1, which was concurred in and adopted by the House of Representatives on Wednesday, August 18th, 1920, by a vote of 50 for and 46 against. I make the point of order that the action of this House in concurring in and adopting said resolution cannot now be reconsidered, because:

1. By the concurrence in and adoption of said Joint Resolution the proposed amendment to the Constitution of the United States therein embodied, was ratified by the State of Tennessee and the power and authority of this House over said resolution was ipso facto terminated.

2. The legislature of Tennessee derives its power to act upon a proposed amendment to the Constitution of the United States from that Constitution, Article V thereof, and from that only. So when a legislature of a State ratified a proposed amendment to said Constitution, its action is final and this power so given by the Constitution of the United States cannot be restricted, modified, or enlarged, and no legislature can, nor can this House of Representatives, provide any rule of procedure, or rule of action which will or can in any manner rescind, reconsider or affect the action of the legislature after a proposed constitutional amendment has been ratified.

3. In acting upon, concurring in and adopting said resolution this legislature was engaged not in a legislative act but was performing a political act and duty for the State of Tennessee, and the rules of this House cannot be applied to, or in any manner govern or control the action of this body in acting upon a proposed amendment to the Constitution of the United States.

4. Rule 31 under which it is sought to maintain or bring forward the proposed motion to reconsider is applicable to questions of legislation only and not political questions and this appears from the rule itself. This body is without power to make a rule which can affect or control in any way the action of this House in acting upon a proposed amendment to the Constitution of the United States.

5. This House of Representatives by the concurrence in and adoption of said joint resolution ratified said proposed amendment to the Constitution of the United States for the State of Tennessee and this body is without power or authority to rescind, reconsider, or repudiate the affirmative action it has taken.

6. This House has already on Saturday, August 21, 1920, by a vote of 50 to nothing, refused to reconsider its action concurring in Senate Joint Resolution No. 1, and directed that said Resolution be returned to the Clerk of the Senate which was accordingly done. Having parted with the possessions of said Resolution, the same is now beyond its control, and no action the House could take, would affect it in any way whatsoever.

7. In adopting the motion to concur in Senate Joint Resolution No. 1, this House was not legislating, but helping to cast the vote of

Tennessee on the 19th Federal Amendment giving suffrage to women and that vote having now been cast, counted, and the result announced, Tennessee can vote no more.

Mr. Speaker Walker overruled the points of order, stating that at present they were premature.

Mr. Odle made the following points of order:

Mr. Odle: I make the point of order that this House cannot *now* reconsider Senate Joint Resolution No. 1, ratifying the Nineteenth Amendment to the Constitution of the United States—because

1. Said Joint Resolution is not in the actual possession of this House, and the Clerk of the House cannot produce it for any action thereon.

2. Under Rule 31—the resolution passed to the Senate when the time in which it could be reconsidered had elapsed.

3. The House by a vote of fifty members declined to reconsider said resolution and directed the Clerk of this House to transmit it as concurred in, to the Senate.

4. Said Joint Resolution is not the exercise of a legislative but of a political function and when passed cannot be reconsidered.

Mr. Speaker Walker overruled the points of order stating that at present they were premature.

188 Thereupon the motion of Mr. Hall prevailed by the following vote:

Ayes	47
Noes	37
Present not voting	6

Representatives voting aye were: Messrs. Bond, Boyd, Boyer, Bratton, Carter, Cassady, Check, Cole, Crawford (of Bedford), Crawford (of Fayette), Dunlap, Forsythe, Francisco, Frogge, Gilbreath, Hall, Harville, Hays, Jackson, Keisling, Long, Martin (of Hamilton), McMurray, Millican, Montgomery, Moore, Norvell, Oldham, Overton, Rucker, Russell, Sharpe, Skidmore, Smith, Story, Swift, Throneberry, Travis (of Franklin), Vinson, Weldon, L. M. Whitaker, M. E. Whitaker, Whitfield, Wilson, Wolfenbarger, Womack and Mr. Speaker Walker—47.

Representatives voting no were: Messrs. Brooks, Burn, Carr, Dodson, Dowlen, Ellis, Fisher, Fitzhugh, Foster, Griffin, Hanover, Hickman, Jeter, Keaton, Larsen, Leath, Light, Loughurst, Lynn, McCalman, Morgan, Moose, Odle, Phelan, Phillips (of Madison), Rector, Riddick, Shoaf, Simpson (of Bradley), Simpson (of Humphreys), Stoval, Swink, Tarrant, Travis (of Henry), Tucker and Wade—37.

Representatives present and not voting were: Messrs. Anderson, Bell, Harris (of Knox), Johnson, Kahn, Phillips (of Hawkins)—6.

Explanations.

My reason for answering present and not voting is—that we may get rid of this question and get down to business and finish up some needed legislation which cannot be done while this question is still in the shape it is. I am satisfied the amendment has been passed and settled and further action by this body will avail nothing.

JOE HARRIS.

Explanation of present and not voting—Ernest S. Bell:

Mr. Speaker, I am not voting for the reason that I believe the matter is beyond the jurisdiction of this body. The Secretary of State has issued his proclamation declaring that Tennessee has ratified the 19th Amendment; that it is now a part of the Federal Constitution and is the supreme law of the land. Therefore, I do not believe that this body has a right to act further on the matter. For that reason I refuse to vote or participate in further action.

ERNEST S. BELL.

Mr. Hall moved that Senate Joint Resolution No. 1 be supplied and that the supplied copy be spread upon the Journal.

The motion prevailed and the resolution is as follows:

Senate Joint Resolution No. 1.

"A Joint Resolution ratifying a proposed Amendment to the Constitution of the United States, providing that the right of citizens of the United States to vote, shall not be denied or abridged by the United States or by any State on account of sex, and providing further that Congress shall have power to enforce this article by appropriate legislation.

"Whereas, Both Houses of the Sixty-sixth Congress of the United States of America, at its first session, by a constitutional majority of two-thirds thereof, passed a resolution submitting to the several States a proposition to amend the Constitution of the United States, a certified copy of which has been received by the Governor of the State of Tennessee, from the Secretary of State of the United States, as required by law, and by him transmitted to the General Assembly, the same being in the following words, to-wit:

"Sixty-sixth Congress of the United States of America.

At the First Session

Begun and Held at the City of Washington on Monday, the Nineteenth Day of May, One Thousand Nine Hundred and Nineteen.

Joint Resolution

Proposing an Amendment to the Constitution Extending the Right of Suffrage to Women.

190 Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), that the following Article is proposed as an amendment to the Constitution, which shall be valid to all intents and purposes as a part of the Constitution when ratified by the legislatures of three-fourths of the several States:

Article —.

"The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

"Congress shall have power to enforce this Article by appropriate legislation."

F. H. GILLETTE,

Speaker of the House of Representatives,

THOS. R. MARSHALL,

Vice-President of the United States

and President of Senate.

"Be it resolved by the Senate of the State of Tennessee, the House of Representatives concurring, that said proposed amendment to the Constitution of the United States of America, be and the same is, hereby ratified by the General Assembly of the State of Tennessee.

"Be it further resolved, that certified copies of the foregoing preamble and joint resolution be forwarded by the Governor of the State of Tennessee to the President of the United States, to the Secretary of State of the United States at Washington, District of Columbia, to the President of the Senate of the United States, and the Speaker of the House of Representatives of the United States."

Mr. Hall called up the motion to reconsider Senate Joint Resolution No. 1.

Mr. Riddick renewed his point of order made.

Mr. Speaker Walker overruled points of order.

Mr. Odle made the following point of order:

191 That the proposed supply of copy of Senate Joint Resolution No. 1 does not show that it is a true and perfect copy of said Resolution and is not certified to.

2. That a resolution cannot be supplied and acted upon, but the original must be in actual possession of the House or no action can be taken.

Mr. Speaker Walker overruled the point of order.

Thereupon Mr. Hall's motion prevailed.

Mr. Hall moved that the House reconsider its action in concurring in Senate Joint Resolution No. 1.

The motion prevailed.

Mr. Hall moved that the House non-concur in Senate Joint Resolution No. 1.

Motion prevailed and the House non-concurred in Senate Joint Resolution No. 1 by the following vote:

Ayes	47
Noes	24
Present and not voting	20

Representatives voting aye were: Messrs. Bond, Boyd, Boyer, Bratton, Carter, Cassady, Cheek, Cole, Crawford (of Bedford), Crawford (of Fayette), Dunlap, Forsythe, Francisco, Frogge, Gilbreath, Hall, Harville, Hays, Jackson, Keisling, Long, Martin (of Hamilton), McMurray, Millican, Montgomery, Moore, Norvell, Oldham, Overton, Rucker, Russell, Sharpe, Skidmore, Smith, Story, Swift, Thorneberry, Travis (of Franklin), Vinson, Weldon, L. M. Whitaker, M. E. Whitaker, Whitfield, Wilson, Wolfenbarger, Womack and Mr. Speaker Walker—47.

Representatives voting no were: Messrs. Brooks, Burn, Carr, Dodson, Foster, Hanover, Johnson, Keaton, Larsen, Light, Lynn, Morgan, Odle, Phillips (of Madison), Rector, Riddick, Shoaf, Simpson (of Humphreys), Stovall, Swink, Tarrant, Tucker and Wade—24.

Representatives present and not voting were: Messrs. Anderson, Bell, Dowlen, Ellis, Fisher, Fitzhugh, Griffin, Harris (of Knox), Hickman, Howard, Jeter, Kahn, Leath, Longhurst, McCallman, Moose, Phelan, Phillips (of Hawkins), Travis (of Henry) and Turner—20.

The following explanation was offered by Mr. Crawford, of Bedford:

Mr. Speaker: I herewith hand to the Clerk of the House petitions signed by approximately two thousand citizens of my County requesting me to change my vote on the reconsideration of the 19th Amendment and on the ground that the overwhelming majority of my people which I represent are against this Amendment.

I voted for this Amendment originally because it was recommended both by National and State Democratic Conventions and I was voting in accordance with what I deemed the will of my constituents, however, I find that the majority of my constituents in accordance with the above mentioned petitions are opposed to this Amendment.

This is the sole reason for the change of my vote. I desire that this explanation be spread upon the Journal of the House.

J. S. CRAWFORD.

The following explanation was offered by Mr. Howard:

The Amendment has been heretofore voted upon carried by a constitutional majority certified by the Governor and proclamation certified by Secretary of State and in my opinion is the law of the land and I therefore decline to vote upon the question further.

The following explanation was offered by Mr. W. W. Phillips:

Because I consider that the 19th Amendment has been legally adopted, and that any other action on it by this House would be a farce. I desire to be recorded as present and not voting.

Mr. Riddick offers the following protest:

I protest, challenge and deny the right and power of the House of Representatives to reconsider the vote by which the resolution ratifying the 19th Federal Amendment was adopted.

193 The Federal Constitution gives to the members of the two

Houses of the various state legislatures the power to cast the vote of their states upon the question whether it will ratify any proposed amendment. Like every other voting power it can be exercised only once in the same election. In passing on last Wednesday the resolution to ratify we were not legislating, we were casting the vote of Tennessee on this question, Tennessee having voted once can vote no more.

The power to ratify is not a legislative function but is a political power and when once exercised the power is exhausted. In this respect it is exactly like the power of the citizen to vote or the power of the two Houses of the Legislature to elect their officers or certain State officials, like Comptroller, Treasurer, etc. These political powers when once exercised are no longer existent. No one ever heard of a motion to reconsider the election of a speaker or of a United States Senator. Thus can no more be done than can the voter reconsider and recall his vote at the polls after it is cast and counted.

I insist that the power to ratify an amendment to a Federal Constitution is precisely like the political power of a citizen to cast his vote or of a legislature to elect officers, and when once exercised is forever ended so far as that election is concerned.

I therefore deny the power of this House to reconsider or change in any respect its action on this resolution at a former day or the session, and respectfully insist that any attempt to do so would be nugatory and void.

I also protest, challenge and deny the power of this House of Representatives, to now take any action whatever, upon Senate Joint Resolution No. 1, upon the ground that it has already refused to reconsider its action concurring in said resolution, and the Clerk of the House, as required by the rules and by special direction of the House, has returned Senate Joint Resolution No. 1 to the Senate. Having thus parted with the possession of said Joint Resolution No. 1, it is now entirely beyond the jurisdiction and control of this

House and any action it might attempt to take concerning same, would be absolutely nugatory, null and void.

T. K. RIDDICK.

194 Mr. Hall moved that the Clerk of the House be and is hereby instructed to notify the Senate that the House has reconsidered its action on Senate Joint Resolution No. 1 relative to ratifying 19th Amendment and has non-concurred in the Resolution, which motion prevailed.

Thursday, September 2, 1920.

Twenty-fifth Day.

The House met at 10.00 A. M. and was called to order by Mr. Speaker Walker.

The proceedings were opened with prayer by the Chaplain, Rev. R. V. Cawthon.

On a call of the roll 86 members were found to be present.

The absent members were: Messrs. Canale, Crawford (of Bedford), Davis, Luther, Lynn, Martin (of Hamilton), Miller, Phillips (of Madison), Rowan, Travis (of Franklin), M. E. Whitaker and Wilson, who were excused.

On motion the reading of the Journal was dispensed with.

Message from the Senate.

Mr. Speaker: I am directed to return House Message hereto attached relative to Senate Joint Resolution No. 1, relative to the ratifying the 19th Amendment to the Constitution of the United States upon the following motion:

Mr. Hill moved that the message be returned to the House for the reason that the whole question was out of the hands of the Senate, and the Senate has no jurisdiction.

CARTER,

Clerk.

Mr. Hall moved that the House return the message to the Senate. The motion prevailed by the following vote:

Ayes	43
Noes	29
Present and not voting.....	8

195 Representatives voting aye were: Messrs. Bond, Boyd, Boyer, Bratton, Carter, Carr, Cassidy, Check, Cole, Crawford (of Fayette), Dunlap, Forsythe, Francisco, Frogge, Gilbreath, Hall, Harville, Hays, Jackson, Keisling, Long, McMurray, Millican, Montgomery, Moore, Norvell, Oldham, Overton, Rucker, Russell, Sharpe, Sipes, Skidmore, Smith, Swift, Throneberry, Vinson, Weldon, L. M. Whitaker, Whittfield, Wolfenberger, Womack and Mr. Speaker Walker—43.

Representatives voting no were: Messrs. Bell, Burns, Dodson, Dowlen, Fisher, Fitzhugh, Foster, Griffin, Hanover, Howard, Jeter, Kahn, Keaton, Larsen, Light, Longhurst, Lynn, McCalmann, Morgan, Moose, Odle, Phelan, Riddick, Simpson (of Humphreys), Stovall, Swink, Travis (of Henry), Tucker and Wade—29.

Representatives present and not voting were: Messrs. Anderson, Brooks, Ellis, Harris (of Knox), Johnson, Leath, Rector, Simpson (of Bradley)—8.

Thursday, September 2, 1920.

Twenty-fifth Day.

The House met at 10.00 A. M. and was called to order by Mr. Speaker Walker.

The proceedings were opened with prayer by the Chaplain, Rev. R. V. Cawthon.

On a call of the roll 86 members were found to be present.

The absent members were: Messrs. Canale, Crawford (of Bedford), Davis, Luther, Lynn, Martin (of Hamilton), Miller, Phillips (of Madison), Rowan, Travis (of Franklin), M. E. Whitaker and Wilson, who were excused.

On motion the reading of the Journal was dispensed with.

Message from the Senate.

Mr. Speaker: I am directed to return House Message hereto attached relative to Senate Joint Resolution No. 1, relative to the
196 ratifying of the 19th Amendment to the Constitution of the United States upon the following motion:

Mr. Hill moved that the message be returned to the House for the reason that the whole question was out of the hands of the Senate and the Senate has no jurisdiction.

CARTER,

Clerk.

Mr. Hall moved that the House return the message to the Senate. The motion prevailed by the following vote:

Ayes	43
Noes	29
Present and not voting.....	8

Representatives voting aye were: Messrs. Bond, Boyd, Boyer, Bratton, Carter, Carr, Cassady, Cheek, Cole, Crawford (of Fayette), Dunlap, Forsythe, Francisco, Frogge, Gilbreath, Hall, Harville, Hays, Jackson, Keisling, Long, McMurray, Millican, Montgomery, Moore, Norvell, Oldham, Overton, Rucker, Russell, Sharpe, Sipes, Skidmore, Smith, Swift, Throneberry, Vinson, Weldon, L. M. Whitaker, Whitfield, Wolfenbarger, Womack and Mr. Speaker Walker—43.

Representatives voting no were: Messrs. Bell, Burn, Dodson, Dowlen, Fisher, Fitzhugh, Foster, Griffin, Hanover, Howard, Jeter, Kahn, Keaton, Larsen, Light, Longhurst, Lynn, McCalman, Morgan, Moose, Odle, Phelan, Riddick, Simpson (of Humphreys), Stovall, Swink, Travis (of Henry), Tucker and Wade—29.

Representatives present and not voting were: Messrs. Anderson, Brooks, Ellis, Harris (of Knox), Johnson, Leath, Rector, Simpson (of Bradley)—8.

Thursday, September 2, 1920.

Twenty-fifth Day.

The House met at 10.00 A. M. and was called to order by Mr. Speaker Walker.

The proceedings were opened with prayer by the Chaplain, Rev. R. V. Cawthon.

On a call of the roll 88 members were found to be present.

The absent members were: Messrs. Canale, Crawford (of Bedford), Davis, Luther, Martin (of Washington), Martin (of Hamilton), Miller, Rowan, Travis (of Franklin), M. E. Whitaker and Wilson, who were excused.

On motion the reading of the Journal was dispensed with.

Mr. Hall offered the following written motion:

Mr. Speaker: I move that a Committee of three be appointed by the Speaker of the House to secure sworn transcripts of the Journal of both Houses relative to the non-concurrence by the House in Senate Joint Resolution No. 1 and that the Committee furnish same to the Governor with the request from the House that he certify the action of the House to the Secretary of State of the United States.

The motion prevailed by the following vote:

Ayes	43
Noes	36
Present and not voting	1

Representatives voting aye were: Messrs. Bond, Boyd, Boyer, Bratton, Carter, Carr, Cassady, Cheek, Crawford (of Fayette), Dunlap, Forsythe, Francisco, Frogge, Gilbreath, Hall, Harville, Hays, Jackson, Keisling, Long, McMurray, Millican, Montgomery, Moore, Norvell, Oldham, Overton, Rucker, Russell, Sharpe, Sipes, Skidmore, Smith, Story, Swift, Throneberry, Vincent, Weldon, L. M. Whitaker, Whitfield, Wolfenbarger, Womack and Mr. Speaker Walker—43.

Representatives voting no were: Messrs. Burns, Dodson, Dowlen, Ellis, Fisher, Fitzhugh, Foster, Griffin, Hanover, Harris (of Knox), Hickman, Howard, Jeter, Johnson, Kahn, Keaton, Larsen, Leath, Light, Lynn, McCalman, Morgan, Moose, Odle, Phelan, Phillips (of Madison), Riddick, Shoaf, Simpson (of Bradley), Simpson

(of Humphreys), Stovall, Swink, Travis (of Henry), Tucker, Turner and Wade—36.

198 The representative present and not voting was: Mr. Rector—1.

I hereby certify that the foregoing is a true and correct copy of the House Journal of the Sixty-first General Assembly of the State of Tennessee, in Extraordinary Session assembled, with reference to each and every proceeding had on Senate Joint Resolution No. 1—Relative to ratifying the 19th Amendment, on August 31st, 1920, and each and every proceeding had thereafter.

J. D. GREEN,

Chief Clerk of the House of Representatives.

Subscribed and sworn to before me this 2nd day of September 1920.

[SEAL.]

ETHEL L. HOLT,

Notary Public.

Prayers.

At the conclusion of testimony taken on both sides, the petitioners offered the following thirteen prayers which the Court refused.

Petitioners' First Prayer.

The Court rules as matter of law that the alleged Nineteenth Amendment of the Constitution of the United States is not an amendment within the scope of the grant of power to amend contained in Article V of said Constitution.

Petitioners' Second Prayer.

The Court rules as matter of law that the alleged Nineteenth Amendment of the Constitution of the United States is in conflict with the proviso contained in Article V of the Constitution of the United States.

Petitioners' Third Prayer.

199 The Court rules as matter of law that a State's suffrage in the Senate means the votes cast in the Senate by Senators elected in the State by the people thereof through Electors who possess the qualifications of Electors of the most numerous branch of the State's Legislature, which qualifications are prescribed and determined by the State in its Constitution or laws, and any purported amendment to the Federal Constitution which nullifies, substitutes or alters the qualifications of such Electors so prescribed and determined by the State, so as to confer the power of electing Senators upon persons on whom the State has not conferred it, or to deny, diminish or dilute such power in the persons upon whom the State has conferred it, operates to deprive the State

of its suffrage in the Senate, and that the alleged Nineteenth Amendment would so operate.

Petitioners' Fourth Prayer.

The Court rules as matter of law that the consent of a State to such changes in the Federal Constitution as by the provisions of Article V require such consent, can only be expressed, whether directly or indirectly, through the voice of the majority of those persons upon whom it has conferred through its Constitution and laws the power to vote, and that any measure which confers such power upon other and different persons or denies, diminishes or dilutes such power in those upon whom the State has conferred it, deprives the State of its power by any means to consent to such changes or amendments, and is inconsistent with the proviso contained in Article 5 of the Constitution of the United States, and that the alleged Nineteenth Amendment is such a measure.

Petitioners' Fifth Prayer.

The Court rules as matter of law that if it find that under the provisions of the Constitution of Tennessee, offered in evidence the Legislature of Tennessee elected prior to the submission of the Nineteenth Amendment by the Congress to the Legislatures of the several States was without authority to act thereon (such being the law of Tennessee) then in determining whether such Amendment has been ratified by the Legislatures of three-fourths of the States any vote purported to have been given by the Legislature of Tennessee must be disregarded.

Petitioners' Sixth Prayer.

The Court rules as matter of law that if it shall find as a fact that by the law of Tennessee the entry upon the Journal of either House of its Legislature of a motion to reconsider the vote by which a bill or resolution was passed or failed of passage has the effect to suspend the operation of such vote until such motion has been acted upon, and if it shall further find that by said law the action of less than a quorum of either House in acting upon such a motion to reconsider is a mere nullity, and if it shall further find that by said law where the Journal of the House offered in evidence shows that a motion to reconsider a vote by which a resolution to ratify the alleged Nineteenth Amendment of the Constitution of the United States was passed was subsequently adopted and the resolution reconsidered and upon such reconsideration such resolution failed of passage and was defeated by a majority of the votes in said House, a quorum being present, then the said resolution was not passed by the Legislature of Tennessee (such being the law of that State), then in determining whether said Amendment has been ratified by the Legislatures of three-fourths of the States the vote

in favor of ratification so purported to have been given by the Legislature of Tennessee must be disregarded.

Petitioners' Seventh Prayer.

The Court rules as matter of law that if it shall find as a fact that by the law of West Virginia, when the Journals of either House of its Legislature being offered in evidence show in clear language that a resolution was defeated in such House and that a motion to reconsider the vote by which it was defeated was likewise defeated, and that under the rules of such House also offered in evidence the question so decided must stand as the judgment of that House and cannot during the session be drawn again into debate, then such resolution is not a resolution passed by the Legislature of West Virginia, notwithstanding without suspension of the rules the
201 said House may have subsequently during the same session voted upon the same question, and notwithstanding such resolution should appear to have been signed by the presiding officers of both Houses and by the Chairman of the respective Committees on enrolled bills, and to have been approved by the Governor, then (such being the law of the State of West Virginia) such resolution if it purport to ratify the alleged Nineteenth Amendment to the Constitution of the United States is without effect and in determining whether such Amendment has been ratified by the Legislatures of three-fourths of the States the vote so purported to have been given by the Legislature of West Virginia must be disregarded.

Petitioners' Eighth Prayer.

The Court rules as matter of law that if it find that under the provisions of the Constitution of Missouri offered in evidence any resolution of the Legislature of that State purporting to ratify an amendment to the Constitution of the United States which may in any wise impair the right of local self-government belonging to the people of that State is without effect (such being the law of Missouri) then in determining whether such an amendment has been ratified by the Legislatures of three-fourths of the States any resolution in favor of such ratification that may have been passed by the Legislature of Missouri must be disregarded; and the Court further rules in the absence of any evidence of the construction placed by the Courts of Missouri on said provision of their State Constitution that the alleged Nineteenth Amendment is such an amendment as may impair the right of local self-government belonging to the people of Missouri.

Petitioners' Ninth Prayer.

The Court rules as matter of law that the grant of power to amend the Constitution of the United States contained in Article V is subject to the conditions under which the Constitution was originally adopted by the people of the United States, and that among such

conditions are the express saving and reservation of powers in the States and the people as stated in the Ninth and Tenth Amendments whose adoption was by the people of the several States made a condition of their ratification of the Constitution, and that no power therefore exists against the consent of any State to adopt an Amendment in derogation of the powers so saved and reserved.

Petitioners' Tenth Prayer.

The Court rules as matter of law that the grant of power to amend the Constitution of the United States contained in Article V is subject to the express limitation contained in the provision of Article IV that the United States shall guarantee to every State a republican form of government, and that a republican form of government can only subsist where, under representative institutions, the people inhabiting the territory over which such government extends, enjoy the power to prescribe and determine what qualifications must be possessed by such of the said inhabitants as they may desire to clothe with the rights and duties of voters, and that a deprivation of such power is beyond the competency of any agency of the people of the United States, established by them in the same Constitution containing the aforementioned guaranty.

Petitioners' Eleventh Prayer.

The Court rules as matter of law that the power to amend the Constitution of the United States, granted by Article V, does not include the power to amend the Constitution of any State, if the last mentioned term be understood to mean such part of the formal instrument known as the Constitution of such State as establishes or defines its government or political structure.

Petitioners' Twelfth Prayer.

The Court rules as matter of law that the efficacy of the provisions of the 15th Amendment in all matters to which they are applicable, including the election of United States Senators, cannot be disputed, but the effect of said Amendment as a precedent in Constitutional law to determine the validity of other measures subsequently proposed and ratified without the consent of this State, even though couched in similar language, may be deemed to be circumscribed by the historical facts relating to the purpose underlying said 15th Amendment and the objects sought to be accomplished at the time of its proposal, as well as by the historical facts relating to the methods by which and the conditions under which its formal proposal and ratification, as duly proclaimed by the Secretary of State, had been accomplished or secured, including such elements of compulsion or force as history relates in the premises, and also the historical facts as to whatever element of vis major may have led to the silent acquiescence in its validity upon the part of such States, or the people thereof, as had not consented to its ratification.

Petitioners' Thirteenth Prayer.

The Court rules that the certificates put in evidence by the respondents purporting to certify to the ratification of the Federal Suffrage Amendment by the legislatures of the States of West Virginia and Tennessee, do not comply with the requirements of Section 205 of the U. S. Revised Statutes in that they do not certify that said amendment was adopted by said respective legislatures "according to the provisions of the Constitution" of the United States, and the Court rules that said certificates are of no virtue or effect in forming the basis or justification of the proclamation of the Secretary of State of the United States, and that said proclamation was therefore irregular and invalid.

To which action of the Court in refusing said prayers offered by petitioners, petitioners excepted and prayed the Court to sign this, their Bill of Exceptions, which is accordingly done this 7th day of March, 1921.

CHAS. W. HEUISLER.

Truly taken.

Test :

_____,
Clerk Court Common Pleas.

204 Appellants' Costs, \$9.25.
 Appellees' Costs, \$7.00.

STATE OF MARYLAND,
Baltimore City, set:

I, Adam Deupert, Clerk of the Court of Common Pleas, in the Eighth Judicial Circuit of the State of Maryland, do hereby certify that the foregoing is truly taken from the records of proceedings of the Court of Common Pleas in the case therein mentioned.

In Testimony Whereof, I hereto set my hand and affix the seal of said Court, this 8th day of March, 1921.

[SEAL.]

ADAM DEUPERT,
Clerk Court Common Pleas.

205 MARYLAND, *set:*

At the Court of Appeals of the said State, begun and held at the City of Annapolis, in and for said State, on the first Monday of April (being the fourth day of the said month) in the year of our Lord, one thousand nine hundred and twenty-one, and in the one hundred and forty-fifth year of the Independence of the United States of America, were present, in consultation:

Chief Judge Boyd; Judges Briscoe, Thomas, Pattison, Urner, Stockbridge, Adkins, Offutt.

C. C. MAGRUDER,
Clerk.

Among other were the following proceedings, to-wit:

206 In the Court of Appeals of Maryland, April Term, 1921.

OSCAR LESER et al.

vs.

J. MERCER GARNETT et al., Constituting the Board of Registry of the Seventh Precinct of the Eleventh Ward of Baltimore City

Appeal from the Court of Common Pleas of Baltimore City.

Judge OFFUTT delivered the opinion of the Court.

Cecelia Street Waters, a white woman, and Mary D. Randolph, a colored woman, both citizens of Maryland, applied on October 12th, 1920, to the Board of Registry of the 7th Precinct of the Eleventh Ward of Baltimore City for registration as qualified voters therein. Aside from their sex, the applicants possessed the qualifications prescribed by the Constitution and laws of this State entitling them to the registration for which they applied. At the time they applied for registration Mr. Oscar Leser, on his own behalf, and on 207 behalf of the Maryland League for State Defense, challenged the right of each of the applicants to register as a qualified voter, on the grounds, first, that the applicants were female citizens of the State whereas the Constitution of Maryland confirmed the right of suffrage to males, and second, that neither of them was entitled to register under the Nineteenth Amendment to the Constitution of the United States, because that Amendment had never been "legally proposed, ratified or adopted as a part of the Constitution", and was invalid because it was "in excess of any power to amend the Constitution of the United States, conferred by the provisions of Article 5" of that Constitution. The challenges were overruled and the applicants duly registered.

Thereafter, on October 30th, 1920, Mr. Leser, and other citizens of Maryland, who were also members of the Board of Managers of the Maryland League for State Defense filed a petition in the Court of Common Pleas of Baltimore City, in which the petitioners stated that they were aggrieved by the action of the Board of Registry in registering the names of the two women to whom we have referred, and asked that their names be stricken from the registry of voters of the precinct in which they were registered. In this petition the petitioners rest their claim for relief upon the following ground;

208 " (1) The said alleged amendment to the United States Constitution is not such an amendment as the Congress is authorized by Article V of the Constitution of the United States to propose to the legislatures of the several states to be by them ratified in accordance with said Article V, but is wholly outside of the scope and purpose of the amending power conferred upon Congress, subject to the ratification by three-fourths of the State Legislatures, by the said article, as is more fully and expressly set forth in the

resolution of the General Assembly of Maryland rejecting and refusing to ratify the said amendment at the January Session of 1920."

Second, "That the said alleged Nineteenth Amendment to the Constitution of the United States was never in fact ratified by the Legislatures of three-fourths of the States now composing the United States of America, the proclamation dated August —, 1920, by the Honorable Bainbridge Colby, Secretary of State of the United States, to the contrary notwithstanding.

(a) Because of the fact that it was not ratified by the Legislature of the State of West Virginia, but on the contrary was defeated and rejected by the said Legislature."

Third, "And because although the Legislature of the State of Missouri undertook to pass a resolution ratifying the said measure, nevertheless it was forbidden to do so by the following provision of the Constitution of the State of Missouri:

"Article II, Section 3. We declare, that Missouri is a free and independent State, subject only to the Constitution of the United States; and as the preservation of the States and the maintenance of their governments are necessary to an indestructible Union, and were intended to co-exist with it, the Legislature is not authorized to adopt nor will the people of this State ever assent to any amendment or change to the Constitution of the United States which may in any wise impair the right of local self-government, belonging to the people of this State."

209 Fourth, "Because of the Legislature of the State of Tennessee being a body corporate created under and in pursuance of the Constitution of the said State and subject to the limitations therein expressed, undertook to act upon a resolution purporting to ratify the said alleged Nineteenth Amendment, yet its action in the premises was null and void for the reason that the members of the said legislature were elected prior to the submission of the said amendment by Congress to the Legislatures of the several States, and therefore by the provisions of the Constitution of the State of Tennessee, the said existing Legislature was prohibited from acting upon said alleged amendment. The provision of said Constitution being as follows:

"No convention or General Assembly shall act upon any amendment of the Constitution of the United States proposed by Congress to the several States, unless such convention or General Assembly shall have been elected after such amendment has been submitted

And because even if the Legislature of the State of Tennessee at its session held in the month of August, 1920, were competent to act in the matter of ratification of the said amendment to the Constitution of the United States, the said legislature did not pass any resolution ratifying the said alleged Nineteenth Amendment, but did in fact, defeat and reject such resolution.

And fifth. "That in a number of the States of the American Union, including the States of Massachusetts, New Jersey, Pennsylvania, Rhode Island, Arkansas, Maine, New Hampshire, Ohio, Iowa, Nebraska, Missouri, Texas, Kentucky and others, the people have seen fit to provide in their State Constitutions that the rights and duties pertaining to the elective franchise shall be limited to men. In these States the people have also provided that no changes should be made in their State Constitutions by any act or resolution of their State Legislatures and have thereby in effect forbidden their said respective State Legislatures to vote for the ratification of any proposed amendment to the Constitution of the United States which would have the effect of abolishing or changing the Constitution of the State."

210 In answer to this petition the respondents asserted, first, that the Court was without jurisdiction to determine "the matters alleged in said petition, because to do so would be to deny full faith and credit in this State to the public Acts, Records, and Judicial Proceedings of other States, in violation of Section 1 of Article 4 of the Constitution of the United States, and to question the validity of an official act duly performed by the Secretary of State of the United States", and because no application was ever made to the appellees to strike from the list of persons registered as qualified voters the two women alleged to have improperly registered, nor were their names placed upon the "suspected" list, nor any "other legal proceeding taken "before the appellees to prevent the registration of said persons or to strike their names from the list of qualified voters in said precinct, nor any hearing had before the appellees in reference to the right of the persons named to register in said precinct, and second, that the two women were not disqualified under the Constitution of the State of Maryland, or of the United States from voting at any election" hereafter to be held.

Testimony was offered in support of the petition, and thirteen prayers presenting the legal propositions advanced by the appellants submitted, and after a hearing these prayers were refused
211 and the petition dismissed. From that order this appeal was taken.

The substantial questions presented by the appeal are, first, whether the Court of Common Pleas of Baltimore City had jurisdiction to pass upon the matters contained in the petition; and second, whether the Nineteenth Amendment of the Constitution of the United States was validly adopted and ratified and is binding upon the several States of the Union and the people thereof, and we will consider these questions in the order in which we have stated them.

The appellee contended that "The Court was without jurisdiction to entertain the petition because the Petitioners did not bring themselves within the provisions of the Election Law authorizing petitions to strike names from the books of registry, and because it does not appear that any summons was served upon either of the persons registered," but we are unable to assent to the proposition thus stated, nor do we regard the decisions of this Court cited in support of it as applicable to the facts of this case. Those facts are that when the

two women to whom we have referred applied to the Board of Registry to be registered as qualified voters, Mr. Oscar Leser, a citizen of Maryland and a resident of Baltimore City, in their presence challenged their right to register and filed at the same time with the

Board of Registry a written memorandum of the grounds
212 of the challenge, and thereupon "the Board conferred and announced a decision overruling" the challenge and allowed the applicants to register, and a formal entry was made on the registration book of the challenge, the filing of the memorandum and the action of the Board thereon.

Section 19 Article 33 C. P. G. L. which provides that "any voter shall be permitted to be present at the place of registration in any precinct of his county or city, and shall have the right to challenge any applicant, and when challenged such applicant shall be carefully questioned by the Board of Registry touching the facts which entitle him to register in such precinct, and thereupon, if a majority of the board is convinced that such applicant is a qualified voter, he shall be entered as qualified," was obviously designed to permit the very procedure which was adopted in this case. Indeed no other conclusion can be reached unless the plain and explicit language of that section is disregarded. Its purpose is to afford an opportunity for objection to the registration of a voter before his name has been placed on the registration book, while section 20 of the same Article which provides that: "If any voter of the ward or county shall go before the Board of Registry during such sessions and make oath that he believes any specified person upon such registry is not a qualified voter, such fact shall be noted," is designed

to supply in part the procedure for striking off the name of a
213 voter after it has been placed on the register. Nor is there anything in the history of the position of the section to indicate that its application is not general, and the right to object to the registration of a disqualified person at the time of his application must have been within the contemplation of the Legislature when it provided in section 25 of the same Act that "any person who feels aggrieved by the action of any Board of Registry in refusing to register him as a qualified voter, or in erasing or misspelling his name, or that of any other person on the registry, or in registering or failing to erase the name of any fictitious, deceased or disqualified person, may at any time, either before or after the last session of the Board of Registry, but not later than the Saturday next preceding the election, if in the city of Baltimore, and not later than the Tuesday next preceding the election, if in the counties, file a petition verified by affidavit, in the Circuit Court for the county, or if the cause of complaint arises in Baltimore City, in any court of Baltimore city, setting forth the ground of his application, and asking to have the registry corrected." And that section was designed to protect the right created by section 19 *Ibid* by allowing a review of the action of the Board of Registry in regard to it.

Nor are the cases to which our attention has been called in conflict with this view. In *Collier vs. Carter* 100 Md. 381 the petition

was filed for the purpose of having the name of one Brady
214 which was on the registration lists as that of a qualified voter,
stricken therefrom. It contained "no suggestion of having
for its object a review of any action taken or judgment rendered else-
where," but in effect asked the Court to exercise an original and not
an appellate jurisdiction. And in *Wilson vs. Carter* 103 Md. 120,
the facts were that the Board of Registry refused at the request of
one of its members to place the name of a registered voter on the
"suspected list" and "refused to take any action whatever" upon
the request, and their non action was the basis of the petition in
that case. The reason given for the request was that the building
given as the residence of the voter was burned down, but there was
no affidavit or other proof of that fact as required by Section 20 in
such cases, nor was there any hearing upon the request. In *Smith*
vs. McCormick 105 Md. 224, a petition was filed to strike the name
of Thomas Carney from the registration lists of Baltimore City on
the ground that he was not a qualified voter, and it appeared that
his name had never been put on the "suspected list," and that his
right to register had never been brought to the attention of the
Board of Registry of the precinct in which he was registered and
that no action was taken by that Board as to it, and in *Hanson vs.*
Daley 129 Md. 288, in which the petition was filed to have the name
of Harry J. Daly stricken from the registration lists of Baltimore

City on the grounds that he was not a qualified voter, it ap-
215 peared that his name had never been placed on the suspected
list but it did not appear that any objection to his right to
register had ever been made to the Board of Registry. The reason
for the decision in each of those cases was very plainly stated by this
Court, speaking through Judge Burke, in *Smith vs. McCormick*
105 Md. 226, in which it said, "the Courts have been uniform in
holding, that their jurisdiction in such matters was appellate, and
not original, and that unless there was some action taken by the
officers of registration upon objections properly before them as to
the registration of a disqualified person the Court was without power
to review or correct any error committed by those officers." But in
this case it does clearly appear that the objection to the registration
of the applicants was brought directly to the attention of the Board
and that they formally acted on it. Nor is there any force in the
contention that the applicants had no notice. They needed no
formal notice because they were present and participated in the pro-
ceeding. The section itself does not provide for any notice because
under it the challenge is made in the presence of the applicant and
before he registers. Under such circumstances any other or further
notice would be an idle and meaningless ceremony.

For the reasons assigned we are of the opinion that the Court of
Common pleas did have jurisdiction in this case.

This brings us to the consideration of the second and principal
question presented by the appeal, and that is, whether the
216 Nineteenth Amendment of the Constitution of the United
States was validly adopted and ratified and is binding upon
the several States of the Union and the people thereof.

In the beginning, it may be well to restate what has become trite from over repetition, the functions, the powers and the limitations of this Court in dealing with such questions. This is a Court of Law. Its function is to ascertain, state and apply the law in its relation to facts involved in litigation before it. It is authorized to interpret and apply the principles of existing law. But whilst it may apply old and long established principles to new uses it cannot make new law. Nor can it do what is in effect the same thing, modify, amend or repeal existing law. In the exercise of these duties and functions, this Court must concede to the Constitution and Statutes of the United States and the decisions of the Supreme Court construing the same a binding and permanent force as have, when not in conflict with the Federal Constitution, the Constitution and laws of this State and the decisions of this Court dealing with them. With the wisdom, the expediency or the effect of such laws we have properly nothing to do except in so far as those considerations may aid in the construction of the law.

In dealing therefore with this question we are constrained to look only at what the law is, and not at the effect of the law, and whether the Constitution has by a series of amendments been changed
217 from a guarantee of the form and permanency of our government or whether those amendments do change the form of our government, as was argued, are considerations which while of profound interest to all citizens nevertheless cannot affect our judgment as to the validity of the amendment. Whether a thing is wise or unwise, is one thing, whether it is unlawful is another. The determination of the first question is for the legislature and of the second, for the Courts. We have restated these principles which have been so frequently laid down by this Court, because we are asked in this case, in effect, to assume and exercise a power essentially legislative in character, and to go beyond the letter of the amending clause of the Constitution, and to read into it an implied prohibition limiting and restricting its application.

We will now turn to the main question and that is, whether the Nineteenth Amendment to the Constitution was validly adopted and ratified. The appellants contend that it was not, and in support of that contention they submit two propositions, one that it was not within the amending power of the Constitution, and the other that if it is within such power, it was not ratified by the requisite number of States.

In dealing with the first of these propositions we are met at the threshold of our inquiry by the fact that the Supreme Court has in effect passed upon the proposition and has found it untenable and unsound, and what ever may be the powers of that Court in regard to correcting or overruling its own decisions relating to the
218 construction or the interpretation of the Constitution of the United States, manifestly this Court is without any such power, but on the contrary it must recognize the binding force of such decisions and be controlled by them.

The fifteenth amendment provides that: "The right of citizens of the United States to vote shall not be denied or abridged by the

United States or by any State on account of race, color or previous condition of servitude." It was proposed to the Legislature of the several States on February 27, 1869, and was declared on March 30, 1870, to have been ratified by 29 of the 37 States.

The Nineteenth Amendment provides that: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex," and was on August 25, 1920 declared to have been ratified by 36 of the 48 States. The only difference between the two amendments is that while the Fifteenth Amendment prohibits discrimination by the States or the Nation against citizens in regard to suffrage on account of "race, color or previous condition of servitude," the Nineteenth Amendment forbids such discrimination on account of "sex." In other words it but adds the word "sex" to the words "race color or previous condition of servitude" occurring in the clause of the Fifteenth Amendment which forbids discrimination against certain classes of citizens in regard to their right to vote, and thus brings another class of citizens within the reach of the prohibition against discrimination on the part of the States or of the United States in conferring the right of suffrage.

If therefore the Fifteenth Amendment was a valid exercise of the amending power, it is impossible to conceive that the Nineteenth Amendment was not likewise a valid exercise of that power, because it is not possible to distinguish the two in principle.

But the Fifteenth Amendment has been repeatedly recognized by the Supreme Court as within the amending power and treated as an integral part of the Constitution. In *U. S. vs. Reese* 92 U. S. 214, in which two election officials were indicted for refusing to receive and count the vote of a citizen of the United States of African descent at a Municipal election that Court in 1875 said: "The Fifteenth Amendment does not confer the right of suffrage upon any one. It prevents the States, or the United States, however, from giving preference, in this particular, to one citizen of the United States over another, on account of race, color or previous condition of servitude. Before its adoption, this could be done. It was as much within the power of a State to exclude citizens of the United States from voting on account of race, etc., as it was on account of age, property or education. Now it is not. If citizens of one race having certain qualifications are permitted by law to vote, those of another having the same qualifications must be. Previous to this Amendment, there was no constitutional guaranty against this discrimination; now there

is. It follows that the Amendment has invested the citizens of the United States with a new constitutional right which is within the protecting power of Congress. That right is exemption from discrimination in the exercise of the elective franchise on account of race, color or previous condition of servitude." And in *Neal vs. Delaware* 103 U. S. 370 (1881) a case in which a colored man indicted in the State of Delaware for a crime punishable by death, sought to have his case removed to a Federal Court on the ground that as the Constitution of Delaware restricted the right of suffrage to "white" male citizen and that as the members of the grand

jury which indicted him and the petit jury which had been summoned to try him were in practice taken from the list of voters and that as under the Constitution of Delaware the names of colored citizens were not included in that list, none appeared on the panels of the grand or petit juries, and that he was in consequence deprived of the equal protection of the law, in dealing with that question, the Court said: "Beyond question the adoption of the Fifteenth Amendment had the effect, in law, to remove from the State Constitution, or render inoperative, that provision which restricts the right of suffrage to the white race. Thenceforward, the statute which prescribed the qualification of jurors was, itself, enlarged in its operation, so as to embrace all who by the State Constitution, as modified by the supreme law of the land, were qualified to vote at a general election. The presumption should be indulged, in the first instance, that the

221 State recognizes, as is its plain duty, an Amendment of the Federal Constitution, from the time of its adoption, as binding on all of its citizens and every department of its government, and to be enforced, within its limits, without reference to an inconsistent provisions in its own constitution or statutes. In this case that presumption is strengthened, and, indeed, becomes conclusive, not only by the direct adjudication of the State Court as to what is the fundamental law of Delaware, but by the entire absence of any statutory enactments or any adjudication, since the adoption of the Fifteenth Amendment, indicating that the State, by its constituted authorities does not recognize, in the fullest legal sense, the binding force of that Amendment and its effect in modifying the State Constitution upon the subject of suffrage." And later in 1915, in *Guinn vs. United States* 238 U. S. 347 in which the question of negro suffrage was before the Court, in speaking of the effect of the Fifteenth Amendment, through the late Chief Justice White, it said:

"(a) Beyond doubt the Amendment does not take away from the state governments in a general sense the power over suffrage which has belonged to those governments from the beginning, and without the possession of which power the whole fabric upon which the division of state and national authority under the Constitution and the organization of both governments rest would be without support, and both the authority of the nation and the state would fall to the ground. In fact, the very command of the Amendment
222 recognizes the possession of the general power by the state, since the Amendment seeks to regulate its exercise as to the particular subject with which it deals.

(b) But it is equally beyond the possibility of question that the Amendment in express terms restricts the power of the United States or the states to abridge or deny the right of a citizen of the United States to vote on account of race, color, or previous condition of servitude. The restriction is coincident with the power and prevents its exertion in disregard to the command of the Amendment. But while this is true, it is true also that the Amendment does not change, modify, or deprive the states of their full power as to suffrage except, of course, as to the subject with which the Amendment deals and to

the extent that obedience to its command is necessary. Thus the authority over suffrage which the States possess and the limitation which the Amendment imposes are coordinate and one may not destroy the other without bringing about the destruction of both."

And in *Myers vs. Anderson* 238 U. S. 368, in which the question presented was the liability of Election officers for denying suffrage to negro citizens in violation of the guaranties of the Fifteenth Amendment and of certain statutes of the United States enacted for the purpose of insuring the protection offered by the Amendment, the Court said: "The qualification of voters under the Constitution of Maryland existed and the statute which previously provided for the registration and election in Annapolis was unaffected by the void provisions of the statute which we are considering. The mere
223 change in some respects of the administrative machinery by the new statute did not relieve the new officers of their duty, nor did it interpose a shield to prevent the operation upon them of the provisions of the Constitution of the United States and the statutes passed in pursuance thereof. The conclusive effect of this view will become apparent when it is considered that if the argument were accepted, it would follow that although the 15th Amendment by its self-operative force, without any action of the state, changed the clause in the Constitution of the state of Maryland conferring suffrage upon 'every white male citizen' so as to cause it to read 'every male citizen,' nevertheless the Amendment was so supine, so devoid of effect, as to leave it open for the legislature to write back by statute the discriminating provision by a mere changed form of expression into the laws of the state, and for the state officers to make the result of such action successfully operative."

In view of these decisions, the right of the Congress of the United States to propose amendments to the Constitution thereof forbidding the United States and the several states from discriminating against any class of its citizens in regard to their rights to vote can not now be called in question, but must be regarded as finally settled. Nor could any useful end be served by commenting in this opinion upon the reasons or the absence of reasons for those decisions. They have been made and now stand as a part of the law of the land and we at
least are bound by them.

224 It was contended that the 15th Amendment was a "War"

Amendment adopted at a time when men's passions and prejudices were aroused, and when restraints or limitations of any kind were irksome and intolerable, and when the people were impatient and intolerant of anything that stood in the way of their will, and were unwilling to be shackled or hindered in the execution of their plans by mere Constitutional limitations, and that therefore the adoption of this Amendment should not be accepted as a precedent, nor the decisions recognizing its validity accepted as conclusive of this case for that reason and for the further reason that the 15th Amendment had been acquiesced in for so long that such acquiescence was in itself equivalent to an express ratification by the States.

But we cannot, in the face of the direct language of the Constitu-

tion describing the manner in which it may be amended recognize the doctrine of amendment by acquiescence as a valid substitute for that method. Nor can we assume, no matter what the state of the public mind may have been, that the Court charged with the duty of guarding and supporting the Constitution, tacitly ratified its violation, but we must on the contrary assume, that when it recognized the validity of the amendment, it did so in the belief that it was within the amending power of the Constitution.

Nor can we assume because the Court did not, in the cases to which we have referred, specifically discuss the extent of the amending power of the Constitution as affecting the validity of the 15th Amendment, but assumed without assigning reasons for its conclusion that the amendment was valid, that it did not consider every question involved in its conclusion. Nor can it be assumed that it permitted its conclusions to rest upon the authority of an amendment which was proposed, adopted and ratified in violation of the Constitution, whether that question was or was not directly put in issue by the pleadings or the arguments in the case. And when therefore in the cases cited, it based its decisions upon the assumption that the 15th Amendment is a valid Amendment, we are bound by those decisions to assume that it is a valid Amendment, and within the Amending power, for there can be no other conclusion. The only power of amending the Constitution is that furnished by itself. Unless any amendment, the validity of which is questioned, can be brought within that power it must fall. When therefore, the validity of an amendment is upheld by competent authority it can only be upon the theory that it is within the Amending power of the Constitution, and when the Supreme Court assumed the validity of the 15th Amendment it necessarily decided that it was within the Amending power. And as the Nineteenth Amendment cannot be distinguished in principle from the Fifteenth Amendment it follows that it is within the Amending power.

In view of this conclusion it becomes unnecessary to consider further the contrary contention which was presented with so much force and sincerity in this Court.

226 Whilst the arguments supporting that contention might have great weight if the question were *and* open one, yet in view of the decisions of the Supreme Court it must be regarded as finally closed.

This brings us to the second proposition which is that the Amendment was not ratified by 36 States.

Mr. Bainbridge Colby, the Secretary of State, on August 26th proclaimed, that the 19th Amendment had been ratified by 36 States including the States of Missouri, Tennessee and West Virginia. The petitioners, however, contended that it never was validly ratified by the States of Missouri, Tennessee or West Virginia, first because under the Constitutions of Missouri and Tennessee, the Legislatures which ratified the Amendment, were without any power or authority to do so, and second, that the action of the Legislatures of Tennessee and West Virginia in ratifying the amendment was in violation of their

own rules of procedure and of the respective Constitutions of those States.

The first reason rests upon the following provisions of the Constitutions respectively of the States of Missouri and Tennessee, Constitution of Missouri, Article 2, Section 3: "Local self-government not to be impaired.—That Missouri is a free and independent State, subject only to the Constitution of the United States; and as the preservation of the States and the maintenance of their governments are necessary to an indestructible union, and were intended to co-exist with it, the Legislature is not authorized to adopt, 227 nor will the people of this State ever assent to any amendment or change of the Constitution of the United States which may in anywise impair the right of local self-government belonging to the people of this State."

Constitution of Tennessee, Article 2, Section 32: "Amendments to Constitution of the United States: No convention or general assembly of this State shall act upon any amendment of the Constitution of the United States proposed by Congress to the several States; unless such convention or general assembly shall have been elected after such amendment is submitted."

It being conceded that the Legislature of Tennessee which ratified the amendment was elected before it was proposed, the question is whether these constitutional provisions are valid limitations upon the amending power created by the 5th Amendment of the Constitution of the United States.

Here again the question which we are called upon to consider has already been answered by the highest Court authorized to deal with the matter which has decided that the people of any one of the several States, cannot impose any limitations upon the amending power of the Constitution, and in our opinion the conclusion there reached was in obvious accord with the purpose and intent of the 5th Amendment. That Amendment provides that an amendment of the Constitution when proposed by two-thirds of the members of each branch of the Congress of the United States shall be adopted

whenever ratified by the Legislatures or Conventions called 228 to consider the question of three-fourths of the States. If,

however, the people of the several States could by State Constitutions take away or limit the rights of such legislatures or conventions to so ratify a proposed amendment to the Constitution, then they could by the exercise of that power nullify and destroy the power of amendment conferred by the 5th Amendment which is a part of the Constitution, and so could by such action amend it in one of its most important and vital elements in a manner not provided by it. Such a conclusion ignores the fundamental distinction between the rights and privileges of the people of the United States in the enactment of legislation in the respective States of which they may be citizens in respect to matters peculiar to the local government of such States, and their rights and privileges when dealing with legislation affecting the people of all the States. The power in the one case is derived from the people of the State, and is an inherent attribute of its sovereignty, while in the other it is

drawn from the Federal Constitution. The power of the people of the United States in their relation to it is limited and defined by the express grants of the Constitution while their power in their relation to governments of the States of which they are citizens is the residuum which is found after subtracting the powers granted in the Federal Constitution by the people of the State to the Federal Government from the sum of the powers possessed by the people of the State in their collective character as a sovereign State. The right to amend

the laws and constitutions of the several States possessed by
229 the people thereof is natural and inherent and is incident to the sovereignty of the States, but the right to amend the Constitution of the United States rests solely upon the provisions of the Constitution of the United States.

Having granted the power to amend that Constitution to the people of all the States manifestly the people of the several States cannot, acting separately, exercise the very power they have granted away.

This conclusion is in accord with the decisions in the two cases of *Hawke vs. Smith*, No. 1, 253 U. S. 221, and *Hawke vs. Smith*, No. 2, *Ibid.* 231, both of which dealt with the validity of a provision of the Ohio Constitution extending the referendum to the ratification by the General Assembly of that State to proposed Amendments of the Federal Constitution. In dealing with that question the Court in the case first cited, which related to the reference of the action of the General Assembly in ratifying the 18th Amendment to the people of Ohio under the provision of the State Constitution referred to, said: "The framers of the Constitution realized that it might in the progress of time and the development of new conditions require changes, and they intended to provide an orderly manner in which these could be accomplished; to that end they adopted the Fifth Article. * * * The Fifth Article is a grant of authority by the people to Congress. The determination of the method of ratification is the exercise of a national power specifically granted by

the Constitution; that power is conferred upon Congress, and
230 is limited to two methods, by action of the legislatures of three-fourths of the States, or conventions in a like number of States. *Dodge v. Woolsey*, 18 How. 331, 348. The framers of the Constitution might have adopted a different method. Ratification might have been left to a vote of the people, or to some authority of government other than that selected. The language of the article is plain, and admits of no doubt in its interpretation. It is not the function of courts or legislative bodies, national or state, to alter the method which the Constitution has fixed."

In *Hawke vs. Smith* No. 2 *supra*, in which the same question was presented except that the Amendment involved there was the 19th Amendment the Court reached the same conclusion.

And in the National Prohibition cases 253 U. S. 386, the Court again said: "The referendum provisions of State Constitutions and Statutes cannot be applied consistently with the Constitution of the United States in the ratification or rejection of Amendments to it."

The facts upon which the contention that the Amendment was

not ratified by the legislatures of West Virginia and Tennessee is based are substantially these:

The Governor of West Virginia convened the Legislature of that State in extra session on February 27, 1920. On the same day a Joint Resolution ratifying the proposed 19th Amendment was offered in the Senate. On March 1st, 1920, this Resolution was defeated, and on March 30th a motion to reconsider that action was lost. But on March 8th the Senate received a message from the House announcing the passage by that body of the Resolution. Objection was made to the further consideration of the Resolution on the ground that the question having once been acted upon and disposed of and the action disposing of it reconsidered and affirmed, it could not again be considered by the Senate, under Rule 52 of that body which reads as follows: "52. The question being once determined, must stand as the judgment of the Senate, and cannot during the session be drawn again into the debate unless reconsidered, and it shall be in order for any member voting with the prevailing side to move a reconsideration of the same within two succeeding days." Notwithstanding the objection the Resolution passed the Senate on March 10th, 1920 and the action of the Legislature — certified to the Department of State.

In Tennessee the Legislature was also convened by the Governor in extra session. It met on August 9th, 1920, and on August 10th a Joint Resolution ratifying the proposed 19th Amendment was offered in the Senate, passed by it on August 13th, 1920, and sent to the House, which on August 18, 1920 concurred in the action of the Senate. On the same day a motion was made to reconsider the action of the House in concurring. On August 21st, there was a motion to call from the Journal the motion to reconsider, but it was declared out of order by the Speaker on the ground that a quorum of the members of the House was not present. Although this ruling was supported by the roll call it was overruled by a majority of those present, and the motion to reconsider voted on and lost. On August 31st, the absentees having returned, the proceedings under which the motion to reconsider had been defeated were expunged from the Journal, and the motion adopted, and the House then passed a motion to non concur in the action of the Senate ratifying the Amendment. In the meantime, and before this action had been taken, the Governor of Tennessee had on August 24th certified to the Federal Government that the Amendment had been ratified by the General Assembly of the State of Tennessee. No particular difficulty is presented by the appellant's contention in regard to the action of the Legislature of West Virginia, even if we assume, which we do not, that the ratification of an Amendment to the Federal Constitution is "legislation" within the meaning of the rules of the Senate of that State governing its procedure in dealing with legislation before it. There is nothing in the general language of the rule in question to withdraw it from the effect of the principle that such rules only operate to prevent members of the House in which the measure upon which it has once acted originated, from again bringing the subject before it, but that they do

not prevent the consideration of the same subject matter when embodied in a Bill or Resolution coming from the other House. Cushing Law & Practice of Legislative Assemblies page 296. Nor can we agree that the two Resolutions offered respectively in the House and Senate were one measure, nor does the case of Smith vs. Mitchell, 69, W. Va., 481, 72 S. E. 756, support that contention. The facts of that case were these, a Bill had been read three times in the House of Delegates and sent to the Senate where it was substituted for a Bill identical with it in text which had been read there on two different days, and the substituted Bill was then read on another day in the Senate and passed. On objection that it was not read in the Senate on three different days, it was held not that the two measures were one, but that as they were identical in their text, and that as the identical text had been read on three different days in the Senate that the object and purpose of the provision requiring three readings was gratified. That is a different thing from holding that the act of one branch of the General Assembly will not be acted upon by the other because it has once acted on the same subject matter, or that two Bills originating in different Houses together constitute one measure.

Inasmuch as it appears that in addition to the 36 States already referred to as having ratified the 19th Amendment the State of Connecticut has also ratified it, it becomes unnecessary to consider at length the effect of the action of the Legislature of Tennessee in regard to it. In dealing with the question before it the Legislature was not bound by its rules or by its laws relating to legislation, because the ratification of an amendment to the Federal Constitution is "not an act of legislation within the proper sense of the word."

Hawke vs. Smith, No. 1 supra, and while it was essential that the ratification be approved by a majority of a quorum of each branch of the General Assembly, in this case that requirement was met, and it was not until that approval had once been given, that the attempt which resulted in so much confusion was made to recall it.

In view of the conclusion we have stated it is apparent that in our opinion no useful purpose could have been served by granting any of the appellant's prayers and without pausing to discuss further the propositions they submit it is sufficient to say that we have discovered no reversible error, in the Court's rulings in regard to them.

For the reasons stated the order appealed from will be affirmed.
Order affirmed with costs.

Filed June 28th, 1921.

Whereupon, Judgment was entered, as follows, to wit:

"1921, June 28th.—Order affirmed with costs."

Opinion filed.

Opinion by Offutt, J.

235

Petition.

In the Court of Appeals of Maryland, April Term, 1921.

OSCAR LESER and Others, Members of the Board of Managers of the Maryland League for State Defense, Appellants,

vs.

J. MERCER GARNETT and Others Constituting the Board of Registry of the Seventh Precinct of the Eleventh Ward of Baltimore City; Cecilia Streett Waters, Mary D. Randolph, and Caroline Roberts and others, Intervening as Defendants, Appellees.

To the Honorable A. Hunter Boyd, Chief Judge Court of Appeals of Maryland:

The Petition of Oscar Leser and others, Appellants in the above entitled case, respectfully shows unto your Honor:

1. That on the 28th day of June 1921, a Final judgment was duly entered by the Court of Appeals of Maryland affirming the judgment entered by the Court of Common Pleas in the matter of a Petition wherein said Oscar Leser and others, members of the Board of Managers of the Maryland League for State Defense were petitioners, and the said J. Mercer Garnett and others, constituting the Board of Registry of the Seventh Precinct of the Eleventh Ward of Baltimore City, and Cecilia Streett Waters and Mary D. Randolph, were defendants, and in the matter of which Petition Caroline Roberts and others, female citizens and residents of the State of Maryland, intervened by petition as parties defendants, which judgment of the Court of Common Pleas was rendered on the 28th day of January, 1921, dismissing the petition of the said Petitioners to have the names of the said defendants Cecilia Streett Waters and Mary D. Randolph struck from the registry of voters of the said precinct.

2. That the said Petitioners at the hearing of the said petition offered thirteen prayers for rulings by the Court of Common Pleas on questions of law arising thereon, which prayers are set forth in the fourth assignment of error filed herewith, and which prayers were each and all rejected by the Court of Common Pleas, and the Court of Appeals of Maryland by its said final judgment entered on the 28th day of June, 1921, affirmed the said action of the Court of Common Pleas in rejecting the said prayers, which action of the Court of Common Pleas upon the evidence before it, constituted the Petitioners' Bill of Exceptions in this case.

236

3. That the said prayers present the issues of law raised in the Court of Appeals, first, as to the validity of the alleged Nineteenth Amendment to the Constitution of the United States, disputed by the Petitioners as being in excess of the power to amend the Constitution conferred by Article V thereof and in violation of an express proviso or prohibition contained in Article V of the Constitution of the United States, and second, the validity of the ratification of the Legislatures of certain states which were certified as having ratified said Amendment, although in point of fact, as your Petitioners averred and offered evidence tending to prove, the said State Legislatures did not in fact or in law ratify the said amendment. That the said issues of law are founded on the Constitution of the United States, and the Petitioners aver that the action of the said defendants constituting the Board of Registry of the Seventh Precinct of the Eleventh Ward of Baltimore City, exercising authority under the State of Maryland, was repugnant to the Constitution of the United States in enforcing as a part thereof an alleged amendment, to wit, the alleged Nineteenth Amendment, which under the true construction of Article V of the said Constitution of the United States was not valid and was not duly ratified so as to become a part thereof.

4. That the judgment of the Court of Appeals of Maryland affirming the judgment of the Court of Common Pleas affirming the action of the said Board of Registry, gives effect in the State of Maryland to the said alleged Nineteenth Amendment as a part of the Constitution of the United States, although the same is not authorized to be adopted as a part of said Constitution by the provisions of Article V thereof or by any provision of said Constitution, and was not in fact duly ratified by a sufficient number of State Legislatures in the manner prescribed by said Article V of the United States Constitution.

5. That in the aforesaid judgment by the Court of Appeals of Maryland certain errors were committed to the prejudice of your Petitioners, all of which will more fully appear from the Assignment of Errors which is filed herewith.

Wherefore, Your Petitioners pray that a Writ of Error from the Supreme Court of the United States may issue in this case to the Court of Appeals of Maryland, the highest Court of the State of Maryland, wherein a decision in this case may be had, for the correction of Errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated by the Clerk of the Court of Appeals of Maryland may be sent to the Supreme Court of the United States as provided by law.

Dated the 14th day of September, 1921.

THOS. F. CADWALADER,
GEORGE ARNOLD FRICK,
WM. L. MARBURY,

Attorneys for Petitioners and Plaintiffs in Error.

Filed September 23rd, 1921.

238

Order of Court.

In the Court of Appeals of Maryland, April Term, 1921.

OSCAR LESER and Others, Members of the Board of Managers of the
Maryland League for State Defense, Appellants,

vs.

J. MERCER GARNETT and Others, Constituting the Board of Registry
of the Seventh Precinct of the Eleventh Ward of Baltimore City;
Cecilia Streett Waters, Mary D. Randolph, and Caroline Roberts
and Others, Intervening as Defendants, Appellees.

On reading of the Petition of Oscar Leser and others, for Writ of Error and the Assignment of Errors, and upon due consideration of the record of said cause; it is ordered, that a Writ of Error be allowed from the Supreme Court of the United States to the Court of Appeals of Maryland, the highest Court of the State of Maryland in which a decision can be had, as prayed for in said Petition, and that said Writ of Error and Citation thereon be issued, served and returned to the Supreme Court of the United States in accordance with law, upon condition that the said Petitioners and Plaintiffs in Error do give security in the sum of Five Hundred (\$500.00) Dollars, that the said Plaintiffs in Error shall prosecute said Writ of Error to effect, and, if said Plaintiffs in Error fail to make their Plea good, shall answer to the Defendants in Error for all costs and damages that may be adjudged or decreed on account of said Writ of Error.

And the said Plaintiffs in Error now presenting a Bond in the sum of Five Hundred (\$500.00) Dollars with United States Fidelity and Guaranty Company, as Security, it is ordered, that the same be and hereby is duly approved.

In witness whereof, I have hereunto set my hand this 20th day of September, 1921.

A. HUNTER BOYD,
*Chief Judge of the Court of Appeals
of Maryland, the Highest Court of
the State of Maryland.*

Filed September 23rd, 1921.

Assignment of Errors.

In the Supreme Court of the United States.

OSCAR LESER et al., Plaintiffs in Error,

VS.

J. MERCER GARNETT et al., Defendants in Error.

Error to the Court of Appeals of Maryland.

Assignment of Errors.

Now come Oscar Leser, a citizen, voter and taxpayer of the City of Baltimore, State of Maryland, and others also citizens, voters and taxpayers of said State, Petitioners and Plaintiffs in Error, by George Arnold Frick and William L. Marbury, their attorneys, and show that in the record and proceedings and in the rendering of the judgment and decision of the Court of Appeals of Maryland, being the highest Court in the State of Maryland in which a decision could be had in the above entitled cause, manifest error has intervened to the prejudice of these Petitioners and Plaintiffs in Error in the particulars following, to wit:

1st. The Court of Appeals of Maryland erred in affirming by its judgment the action of the Court of Common Pleas in dismissing the petition of the Petitioners and Plaintiffs in Error.

2nd. The Court of Appeals of Maryland erred in deciding by its final judgment in this cause that the alleged Nineteenth Amendment to the Constitution of the United States is within the amending power conferred by Article V of the Constitution of the United States.

3rd. The Court of Appeals of Maryland erred in affirming by its final judgment in this cause, the action of the Court of Common Pleas in deciding that the alleged Nineteenth Amendment has been duly ratified by a sufficient number of State Legislatures to become valid as a part of the Constitution of the United States.

4th. The Court of Appeals of Maryland erred in affirming by its final judgment in this cause the action of the Court of Common Pleas in rejecting thirteen prayers offered by the Petitioners in said Court, praying for the ruling of said Court upon matters of law therein set forth, which thirteen prayers are in the words following, to wit:

Petitioners' First Prayer.

The Court rules as matter of law that the alleged Nineteenth Amendment of the Constitution of the United States is not an amendment within the scope of the grant of power to amend contained in Article V of said Constitution.

Petitioners' Second Prayer.

The Court rules as matter of law that the alleged Nineteenth Amendment of the Constitution of the United States is in conflict with the proviso contained in Article V of the Constitution of the United States.

Petitioners' Third Prayer.

The Court rules as matter of law that a State's suffrage in the Senate means the votes cast in the Senate by Senators elected in the State by the people thereof through Electors who possess the qualifications of Electors of the most numerous branch of the State's Legislature, which qualifications are prescribed and determined by the State in its Constitution or laws, and any purported amendment to the Federal Constitution which nullifies, substitutes or alters the qualifications of such Electors so prescribed and determined by the State, so as to confer the power of electing Senators upon persons on whom the State has not conferred it, or to deny, diminish or dilute such power in the persons upon whom the State has conferred it, operates to deprive the State of its suffrage in the Senate, and that the alleged Nineteenth Amendment would so operate.

Petitioners' Fourth Prayer.

The Court rules as matter of law that the consent of a State to such changes in the Federal Constitution as by the provisions of Article V require such consent, can only be expressed, whether directly or indirectly, through the voice of the majority of those persons upon whom it has conferred through its Constitution and laws the power to vote, and that any measure which confers such power upon other and different persons or denies, diminishes or dilutes such power in those upon whom the State has conferred it, deprives the State of its power by any means to consent to such changes or amendments, and is inconsistent with the proviso contained in Article V of the Constitution of the United States, and that the alleged Nineteenth Amendment is such a measure.

Petitioners' Fifth Prayer.

The Court rules as matter of law that if it find that under the provisions of the Constitution of Tennessee, offered in evidence the Legislature of Tennessee elected prior to the submission of the Nineteenth Amendment by the Congress to the Legislatures of the several States was without authority to act thereon (such being the law of Tennessee) then in determining whether such Amendment has been ratified by the Legislatures of three-fourths of the States any vote purported to have been given by the Legislature of Tennessee must be disregarded.

Petitioners' Sixth Prayer.

The Court rules as matter of law that if it shall find as a fact that by the law of Tennessee the entry upon the Journal of either House of its Legislature of a motion to reconsider the vote by which a bill or resolution was passed or failed of passage has the effect to suspend the operation of such vote until such motion has been acted upon, and if it shall further find that by said law the action of less than a quorum of either House, in acting upon such a motion to reconsider is a mere nullity, and if it shall further find that by said law where the Journal of the House offered in evidence shows that a motion to reconsider a vote by which a resolution to ratify the alleged Nineteenth Amendment of the Constitution of the United States was passed was subsequently adopted and the resolution reconsidered and upon such reconsideration such resolution failed of passage and was defeated by a majority of the votes in said House, a quorum being present, then the said resolution was not passed by the Legislature of Tennessee (such being the law of that State), then in determining whether said Amendment has been ratified by the Legislatures of three-fourths of the States the vote in favor of ratification so purported to have been given by the Legislature of Tennessee must be disregarded.

Petitioners' Seventh Prayer.

The Court rules as matter of law that if it shall find as a fact that by the law of West Virginia, when the Journals of either House of its Legislature being offered in evidence show in clear language that a resolution was defeated in such House and that a motion to reconsider the vote by which it was defeated was likewise defeated, and that under the rules of such House also offered in evidence the question so decided must stand as the judgment of that House and cannot during the session be drawn again into debate, then such resolution is not a resolution passed by the Legislature of West Virginia, notwithstanding without suspension of the rules the said House may have subsequently during the same session voted upon the same question, and notwithstanding such resolution should appear to have been signed by the presiding officers of both Houses and by the Chairmen of the respective Committees on enrolled bills, and to have been approved by the Governor, then (such being the law of the State of West Virginia) such resolution if it purport to ratify the alleged Nineteenth Amendment to the Constitution of the United States is without effect, and in determining whether such

242 Amendment has been ratified by the Legislatures of three-fourths of the States the vote so purported to have been given by the Legislature of West Virginia must be disregarded.

Petitioners' Eighth Prayer.

The Court rules as matter of law that if it find that under the provisions of the Constitution of Missouri offered in evidence any

resolution of the Legislature of that State purporting to ratify an amendment to the Constitution of the United States which may in any wise impair the right of local self-government belonging to the people of that State is without effect (such being the law of Missouri), then in determining whether such an amendment has been ratified by the Legislatures of three-fourths of the States any resolution in favor of such ratification that may have been passed by the Legislature of Missouri must be disregarded; and the Court further rules in the absence of any evidence of the construction placed by the Courts of Missouri on said provision of their State Constitution that the alleged Nineteenth Amendment is such an amendment as may impair the right of local self-government belonging to the people of Missouri.

Petitioners' Ninth Prayer.

The Court rules as matter of law that the grant of power to amend the Constitution of the United States contained in Article V is subject to the conditions under which the Constitution was originally adopted by the people of the United States, and that among such conditions are the express saving and reservation of powers in the States and the people as stated in the Ninth and Tenth Amendments whose adoption was by the people of the several States made a condition of their ratification of the Constitution, and that no power therefore exists against the consent of any State to adopt an Amendment in derogation of the powers so saved and reserved.

Petitioners' Tenth Prayer.

The Court rules as matter of law that the grant of power to amend the Constitution of the United States contained in Article V is subject to the express limitation contained in the provision of Article IV that the United States shall guarantee to every State a republican form of government, and that a republican form of government can only subsist where, under representative institutions, the people inhabiting the territory over which such government extends, enjoy the power to prescribe and determine what qualifications must be possessed by such of the said inhabitants as they may desire to clothe with the rights and duties of voters, and that a deprivation of such power is beyond the competency of any agency of the people of the United States, established by them in the same Constitution containing the aforementioned guaranty.

Petitioners' Eleventh Prayer.

The Court rules as matter of law that the power to amend the Constitution of the United States, granted by Article V, does not include the power to amend the Constitution of any State, if the last mentioned term be understood to mean such part of the formal instrument known as the Constitution of such State as establishes or defines its government or political structure.

243

Petitioners' Twelfth Prayer.

The Court rules as matter of law that the efficacy of the provisions of the 15th Amendment in all matters to which they are applicable, including the election of United States Senators, cannot be disputed, but the effect of said Amendment as a precedent in Constitutional law to determine the validity of other measures subsequently proposed and ratified without the consent of this State, even though couched in similar language, may be deemed to be circumscribed by the historical facts relating to the purpose underlying said 15th Amendment and the objects sought to be accomplished at the time of its proposal, as well as by the historical facts relating to the methods by which and the conditions under which its formal proposal and ratification, as duly proclaimed by the Secretary of State, had been accomplished or secured, including such elements of compulsion of force as history relates in the premises, and also the historical facts as to whatever element of vis major may have led to the silent acquiescence in its validity upon the part of such States, or the people thereof, as had not consented to its ratification.

Petitioners' Thirteenth Prayer.

The Court rules that the certificates put in evidence by the respondents purporting to certify to the ratification of the Federal Suffrage Amendment by the legislatures of the States of West Virginia and Tennessee, do not comply with the requirements of Section 205 of the U. S. Revised Statutes in that they do not certify that said amendment was adopted by said respective legislatures "according to the provisions of the Constitution of the United States, and the Court rules that said certificates are of no virtue or effect in forming the basis or justification of the proclamation of the Secretary of State of the United States, and that said proclamation was therefore irregular and invalid.

By reason whereof these Petitioners, and Plaintiffs in Error, pray that the said judgment of the Court of Appeals of Maryland may be reversed, annulled and held for nothing.

Dated the 14- day of September, 1921.

GEORGE ARNOLD FRICK,
WM. L. MARBURY,

Attorneys for Oscar Leser and Others, Plaintiffs in Error.

Filed September 23rd, 1921.

244

Bond With Approval Thereon.

Know all men by these presents, That we, Oscar Leser (acting on his own behalf and on behalf of all his co-plaintiffs in error in the cause hereinafter mentioned) individually, as principal, and United States Fidelity and Guaranty Company, a corporation, as sureties, are held and firmly bound unto J. Mercer Garnett, Frederick W. Beck, William J. Hogan and Daniel Billmyer, constituting the

Board of Registry of the 7th precinct of the 11th Ward of Baltimore City, Cecilia Streett Waters, Mary D. Randolph, and Caroline Roberts and others intervening by petition as defendants, defendants in error, in the full and just sum of Five hundred (\$500.) dollars, to be paid to the said J. Mercer Garnett and others, defendants in error, their certain attorney, executors, administrators, or assignus; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this — day of September, in the year of our Lord one thousand nine hundred and twenty-one.

Whereas, lately at a Court of Appeals of the State of Maryland in a suit depending in said Court, between Oscar Leser and others, members of the Board of Managers of the Maryland League for State Defence, Appellants, and J. Mercer Garnett and others constituting the Board of Registry of the 7th precinct of the 11th Ward of Baltimore City, Cecilia Streett Waters, Mary D. Randolph, and Caroline Roberts and others intervening by petition below as defendants, Appellees, a judgment was rendered against the said Oscar Leser and others, appellants, and the said Oscar Leser and others, appellants in said Court of Appeals of Maryland, having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said J. Mercer Garnett and others, appellees in said Court of Appeals of Maryland, citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof.

244½ Now, the condition of the above obligation is such, That if the said Oscar Leser and others, plaintiffs in error, shall prosecute said writ of error to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

OSCAR LESER. [SEAL.]

UNITED STATES FIDELITY &
GUARANTY CO.,

R. HOWARD BLAND, [SEAL.]

Vice Pres.;

WILLIAM J. McFEELY, [SEAL.]

Asst. Secretary.

Sealed and delivered in presence of—

THOS. F. CADWALADER,

(As to O. L.)

ALBERT H. BUCK,

As to Surety.

Approved by—

A. HUNTER BOYD,

*Chief Judge of the Court of
Appeals of Maryland.*

September 20, 1921.

Filed September 23rd, 1921.

245 UNITED STATES OF AMERICA, *ss.*

The President of the United States of America to the Honorable the Judges of the Court of Appeals of the State of Maryland, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Appeals of the State of Maryland before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Oscar Leser, Eugene H. Beer, Harry M. Benzinger, John R. Bland, Thomas F. Cadwalader, Key Compton, W. Bernard Duke, John H. Ferguson, Joseph C. France, Robert Garrett, J. Hemsley Johnson, Edward D. Martin, C. Wilbur Miller, Charles O'Donovan, Joseph Packard, Thomas Marshall Smith, Theodore E. Straus, Herbert T. Tiffany, Clement S. Ucker, Michael B. Wild, William E. P. Wyse, Appellants, and J. Mercer Garnett, Frederick W. Beck, William J. Hogan, and Daniel Billmeyer, constituting the Board of Registry of the Seventh Precinct of the Eleventh Ward of the City of Baltimore, Cecilia Streett Waters, Mary D. Randolph, Defendants, and Caroline Roberts, Clara T. Waite, Josephine L. Chatard, Eugenia H. Parker, Madeline Le Moyne Ellicott, A. Page Reid, Margaret T. Carey, Anna W. Heath, Evelyn P. Lord, Annie Janney, Mary W. Ramey, and Hattie M. Emmert, intervening as defendants, Appellees, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of their validity; a manifest error hath happened to the great damage of the said Oscar Leser, Eugene H. Beer, Harry M. Benzinger, John R. Bland, Thomas F. Cadwalader, Key Compton, W. Bernard Duke, John H. Ferguson, Joseph C. France, Robert Garrett, J. Hemsley Johnson, Edward D. Martin, C. Wilbur Miller, Charles O'Donovan, Joseph Packard, Thomas Marshall Smith, Theodore E. Straus, Herbert T. Tiffany, Clement S. Ucker, Michael B. Wild, William E. P. Wyse, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within — days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable William Howard Taft, Chief Justice of the United States, the twentieth day of September, in the year of our Lord one thousand nine hundred and twenty one.

[Seal of United States District Court, Maryland.]

ARTHUR L. SPAMER,
*Clerk of the District Court of the
United States for the District of
Maryland.*

Allowed by

A. HUNTER BOYD,

*Chief Judge of the Court of Appeals
Maryland.*

[Endorsed:] Supreme Court of the United States, October Term, 191—. Oscar Leser et al. vs. J. Mercer Garnett et al. Writ of error.

247 UNITED STATES OF AMERICA, *vs.*

To J. Mercer Garnett, Frederick W. Beck, William J. Hogan, and Daniel Billmyer, constituting the Board of Registry of the Seventh Precinct of the Eleventh Ward of the City of Baltimore; Cecilia Streett Waters, Mary D. Randolph, Defendants, and Caroline Roberts, Clara T. Waite, Josephine L. Chatard, Eugenia H. Parker, Madeline Le Moyne Ellicott, A. Page Reid, Margaret T. Carey, Anna W. Heath, Evelyn P. Lord, Annie Janney, Mary W. Ramey, and Hattie M. Emmart, intervening as defendants, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Court of Appeals of the State of Maryland, wherein Oscar Leser, Eugene H. Beer, Harry M. Benzinger, John R. Bland, Thomas F. Cadwalader, Key Compton, W. Bernard Duke, John H. Ferguson, Joseph C. France, Robert Garrett, J. Hensley Johnson, Edward D. Martin, C. Wilbur Miller, Charles O'Donovan, Joseph Packard, Thomas Marshall Smith, Theodore E. Straus, Herbert T. Tiffany, Clement S. Ucker, Michael B. Wild, and William P. E. Wyse are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable A. Hunter Boyd, Chief Judge of the Court of Appeals of the State of Maryland, this twentieth day of September, in the year of our Lord one thousand nine hundred and twenty-one.

A. HUNTER BOYD,
*Chief Judge of the Court of
Appeals of the State of Maryland.*

248 On this 22nd day of September, in the year of our Lord one thousand nine hundred and twenty-one, personally appeared Thomas F. Cadwalader before me, the subscriber, a Notary Public of the State of Maryland duly commissioned and qualified to act in and for Baltimore City and makes oath that he delivered a true copy of the within citation to Cecilia Streett Waters, at her residence, No. 824 North Eutaw Street, in the City of Baltimore, and that he took a true copy thereof also to the given address in said city of Mary D. Randolph, (col.), No. 331 West Riddle St, but said Mary D. Randolph was not found, having moved away, and her present address is unknown.

Sworn to and subscribed the twenty-second day of September, A. D. 1921.

[Seal of Margaret K. Schaffer, Notary Public, Baltimore, Md.]

MARGARET K. SCHAFER,
Notary Public.

Service of copy of the within citation admitted, this 22nd day of September A. D. 1921.

ALEXANDER ARMSTRONG,
*Attorney General of Maryland, Attorney
for J. Mercer Garnett et al., Members of
Board of Registry of 7th Pct. of 11th
Ward of Baltimore City.*

GEO. M. BRADY,

ROYCE HOWELL,

JACOB M. MOSES,

*Attorneys for Caroline Roberts et al., In-
tervening Petitioners, as Defendants
Below and Appellants in Court of Ap-
peals of Maryland*

249

Appellants' Costs.

Record	\$330.00
Briefs	336.00
Appearance fee	10.00
Clerk	2.40
	<hr/>
	\$678.40

Appellees' Costs.

Brief	\$41.00
Appearance fee	10.00
Clerk	1.45
	<hr/>
	\$52.45

Cost of Record \$64.00.

250 STATE OF MARYLAND, *set*:

I, C. C. Magruder, Clerk of the Court of Appeals of the State of Maryland do hereby certify that the said Court is the highest Court of Law and Equity in said State in which a decision can be had.

I further certify that the foregoing is a true transcript of record, opinion of the Court and judgment entered thereon, petition for writ of error, assignment of errors and order of Court thereon, and Bond with approval thereon endorsed, in the case there stated.

And in obedience to the commands of the within writ I now transmit said transcript of record together with the original writ of error and the original citation in said cause, to the Supreme Court of the United States.

In Testimony Whereof I hereunto subscribe my name and the seal of the Court of Appeals of Maryland affix this twenty-fourth day of September, A. D. 1921.

[Seal of Court of Appeals, Maryland.]

C. C. MAGRUDER,
Clerk of the Court of Appeals of Maryland.

Endorsed on cover: File 28,508, Maryland Court of Appeals. Term No. 553. Oscar Leser, Eugene H. Beer, Harry M. Benzinger, et al., plaintiffs in error, vs. J. Mercer Garnett, Frederick W. Beck, William J. Hogan, et al., &c., et al. Filed September 26th, 1921. File No. 28,508.



FILED

DEC 18 1921

WM. H. STANFORD

CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1921.

No. 553.

OSCAR LESER, ET AL.,

PLAINTIFFS IN ERROR,

against

J. MERCER GARNETT, ET AL.,

DEFENDANTS IN ERROR.

**ON ERROR AND PETITION FOR HABEAS CORPUS TO THE COURT
OF APPEALS OF MARYLAND.**

BRIEF FOR PLAINTIFFS IN ERROR.

THOMAS F. CADWALADER,

GEORGE ARNOLD FRICK,

WILLIAM L. MARBURY,

For Plaintiffs in Error.

ANALYTICAL INDEX.

	PAGE
STATEMENT OF THE CASE.....	1
1. THE PETITION.....	1
2. THE MARYLAND CONSTITUTION.....	2
3. REPUGNANCY OF ACTION OF STATE AUTHORITIES TO CONSTITUTION OF UNITED STATES.....	2-3
4. AMENDMENT REJECTED BY MARYLAND.....	3
5. PROCEDURE UPON PETITION.....	4
6. THE FACTS SHOWN.....	5-16
I. Nature of the Evidence.....	5
II. Petitioners' Evidence.....	6-14
1. Constitution of West Virginia.....	7
2. Constitution of Tennessee (Rules, etc.).....	7
3. Constitution of Tennessee (Limitation).....	7
4. Constitution of Missouri (Limitation).....	7
5. Constitutions of All Ratifying States How Amendable	8
6. Proceedings in Tennessee Legislature.....	8-9
7. Proceedings in West Virginia Legislature.....	9-11
8. Law of West Virginia Upon Authentication of Legislative Acts.....	11-13
9. Law of Tennessee Upon Authentication of Leg- islative Acts.....	13-14
10. Refusal of Secretary of State of United States to Question Verity of "Official Notice".....	14
III. Defendants' Evidence.....	14-16
1. Proclamation of Ratification.....	14-15
2. Certificate to State Department from West Vir- ginia	15
3. Certificate from Governor of Tennessee.....	15
4. Certificate from Secretary of State of Connecti- cut	16
IV. Rebuttal	16
Further Certificate to State Department from Gov- ernor of Tennessee.....	16
7. PROPOSITIONS OF LAW BELOW.....	16

SPECIFICATION OF ERRORS	16-20
Nos. 1- 5, Relating to Validity	17-18
Nos. 6-15, Relating to Ratification	18-20
Nos. 16-17, Relating to Refusal of All Prayers.....	20

ARGUMENT	20
-----------------------	----

I. THE NINETEENTH AMENDMENT INVALID AS EXCEEDING LIMITS OF POWER TO AMEND DELEGATED IN ARTICLE V	20-100
1. THE IMPLIED LIMITS EXCEEDED	21-49
a. No Decision Denies Doctrine of Implied Limits.....	21-22
b. History Sustains the Doctrine.....	22-31
i. Legislatures, Even of Three-fourths of States, Never Supreme.....	22-27
ii. Conventions, Even of Three-fourths of States, Never Supreme Over People of Other States.....	28-31
iii. Sovereignty of People Exercised Concurrently by States	31
c. Analogy Sustains the Doctrine.....	32-39
i. Limits of Taring Power.....	32-34
ii. No Unlimited Power Granted by Constitution....	34-36
iii. Limits Implied from Necessity.....	36-37
iv. Similar Necessity Limits Other Constitutional Powers	37-39
d. Reason Sustains the Doctrine.....	39-47
i. State Sovereignty Inherent, Not Permissive.....	39-40
ii. Popular Sovereignty in England Distinguished...	41
iii. Irresponsibility of Amending Power Applied to Suffrage	41-42
iv. Indestructibility of States One of Purposes of Constitution	43-44
v. Rule of Construction That Accomplishes Purpose of Instrument Obligatory.....	44-47
e. Summary	48-49
2. EXPRESS LIMITS OF THE AMENDING POWER	49-73
a. History of the Proviso (See Appendix).....	49-51
b. History of the Suffrage in the Senate and the House...	52-57
c. Contemporary Criticism of the Plan.....	57-64
d. Meaning of Proviso as Applied to Plan.....	64-69
e. Examples of Proposed Violations of Proviso.....	69-71
f. State Must Be Capable of Consenting.....	71
g. Election of Senators Committed to States.....	72
3. THE NINETEENTH AMENDMENT VIOLATES THE PROVISIO AND SO EXCEEDS EXPRESS LIMITS OF AMENDING POWER	73-85

I. Effect of the Amendment.....	73-75
II. Operation of an Amendment Restricting Suffrage....	75-76
III. Operation of an Amendment Enlarging or Conferring Suffrage	76-77
IV. Settled Law of Corporations Forbids Enlarging Suffrage Against the Corporate Will.....	78-82
V. Summary	82-85
PETITIONERS' 2ND, 3RD AND 4TH PRAYERS.....	84
4. THE FIFTEENTH AMENDMENT AND DECISIONS THEREUNDER DO NOT GOVERN THIS CASE.....	85-100
a. Consent Has Validated 15th Amendment.....	85-90
b. Conditions of Reconstruction After Civil War Removed Question of Consent from Realm of Judicial Decision..	90-92
c. Example in Creation of West Virginia.....	92-93
d. Violence No Substitute Method of Amending Constitution, But Its Effects Not Subject to Judicial Inquiry...	93
e. Essential Difference Between Race and Sex Discrimination	94-100
i. Race Problems National in Scope.....	94-96
ii. Sex Discrimination Not a National Problem.....	96
iii. Nineteenth Amendment Forbids Natural Distinctions Common to Every Code.....	97-98
iv. Summary	98-100
II. THE NINETEENTH AMENDMENT HAS NOT BEEN RATIFIED, NOT HAVING RECEIVED THE ASSENT OF THREE-FOURTHS OF THE STATES.....	100-117
1. Tennessee and West Virginia in Fact Rejected the Amendment	100-102
2. The Legislatures of Five States, Missouri, Tennessee, West Virginia, Texas and Rhode Island, Were Incompetent to Ratify This Amendment and Their Ratifications Are Void.	102-117
a. EXTENT OF THE POWERS OF LEGISLATURES.....	103-104
b. HAWKE VS. SMITH DISCUSSED.....	105-107
c. RESTRICTIONS ON LEGISLATURES OF THE FIVE STATES...	107-110
d. LEGISLATURES ARE AGENTS OF STATES, NOT OF NATION..	111
e. NO MASS SOVEREIGNTY ABOVE PEOPLE OF THE STATES...	111-114
f. SOVEREIGNTY NOT TRANSFERRED TO AGENTS OF THE PEOPLE	115-117
g. CONCLUSION	117
III. CONCLUSION	117-119
APPENDIX A.....	i-iv

TABLE OF CASES.

Allen vs. McKeen, 1 Sumn. 276.....	80
Brewer vs. Huntington, 86 Tenn. 732.....	13, 100
Brown vs. Hummel, 6 Pa. St. 86.....	80
Bryan vs. Board of Education, 151 U. S. 639.....	80
Citizens' Sec. & Land Co. vs. Uhler, 48 Md. 455.....	47
Civil Rights Cases, 100 U. S. 3.....	37
Cohens vs. Virginia, 6 Wheat. 264.....	22, 29, 60, 106
Collector vs. Day, 11 Wall. 113.....	33, 34, 35, 118
Dartmouth College vs. Woodward, 4 Wheat. 518.....	78, 80
Dillon vs. Gloss, 41 S. C. Rep. 510.....	85
Dodge vs. Woolsey, 18 How. 331.....	85
Evans vs. Gore, 253 U. S. 245.....	36
Guinn vs. U. S., 238 U. S. 347.....	74, 75, 83, 87, 97
Haire vs. Rice, 204 U. S. 291.....	107
Hawke vs. Smith, 253 U. S. 221.....	105
Kansas vs. Colorado, 206 U. S. 46.....	69
Lane County vs. Oregon, 7 Wall. 71.....	34, 76
Legal Tender Cases, 12 Wall. 457.....	45
Livermore vs. Waite, 102 Calif. 113.....	47
Loan Association vs. Topeka, 20 Wall. 655.....	34
Luther vs. Borden, 7 How. 1.....	76, 92, 118
McCulloch vs. Maryland, 4 Wheat. 316.....	23, 24, 29, 58, 97, 103, 113
Myers vs. Anderson, 238 U. S. 368.....	73, 86, 87, 89
National Prohibition Cases, 253 U. S. 350.....	21
Neri vs. Delaware, 103 U. S. 370.....	87
Ohio vs. Neff, 52 Ohio St. 375.....	80, 81
Osborne vs. Staley, 5 W. Va. 85.....	11, 100
Regents vs. Williams, 9 Gil & Johns. 365.....	80, 81
Rhode Island vs. Palmer, 253 U. S. 350.....	21
Sage vs. Dillard, 15 B. Monroe 340.....	80, 81
Shields vs. Ohio, 95 U. S. 324.....	47
Sinking Fund Cases, 99 U. S. 700.....	47
Slaughter House Cases, 16 Wall. 36.....	38
Smith vs. Mitchell, 60 W. Va. 481.....	11, 100
State vs. Algood, 87 Tenn. 163.....	13, 14, 100
State vs. Hubbard, 148 Ala. 391.....	45
Strauder vs. West Virginia, 100 U. S. 303.....	96
Sturges vs. Crowninshield, 4 Wheat. 193.....	39
Texas vs. White, 7 Wall. 700.....	43, 76
United States vs. Mosley, 238 U. S. 382.....	87
United States vs. Reese, 92 U. S. 214.....	87
Webb vs. Carter, 129 Tenn. 182.....	13, 14, 100
White vs. Hart, 13 Wall. 646.....	44
Yerger, Ex Parte, 8 Wall. 85.....	45
Zabriskie vs. Hackensack, 18 N. J. Eq. 178.....	47

CONSTITUTIONS AND STATUTES.

UNITED STATES CONSTITUTION—

Preamble	31, 72
Article I, Sec. 1.	68
Article I, Sec. 2.	112
Article I, Sec. 4.	64
Article I, Sec. 8.	32
Article I, Sec. 10.	78, 80
Article IV, Sec. 4.	118
Article V.	<i>passim</i>
Article VII.	28
Amendments—	
Article XIII.	37
Article XIV.	37, 38, 78, 80, 96, 98
Article XV.	73, 74, 85 et seq., 94 et seq.
Article XVI.	37, 87
Article XVII.	62, 72, 73
Article XVIII.	21
Statutes—	
Judicial Code, Sec. 237.	5
R. S. 5508, etc.	87

MARYLAND CONSTITUTION—

Article I, Secs. 1, 2, 3.	2
Article III, Sec. 57.	46
Declaration of Rights, Articles 2 and 4.	2
Acts, 1716, Ch. 11.	27

MISSOURI CONSTITUTION—

Article 2, Sec. 3.	7, 103, 108
----------------------------	-------------

RHODE ISLAND CONSTITUTION—

Article I.	103, 109
--------------------	----------

TENNESSEE CONSTITUTION—

Article II, Sec. 11.	7
Article II, Sec. 32.	7, 103, 108

TEXAS CONSTITUTION—

Article I, Secs. 1, 29.	103, 108
---------------------------------	----------

WEST VIRGINIA CONSTITUTION—

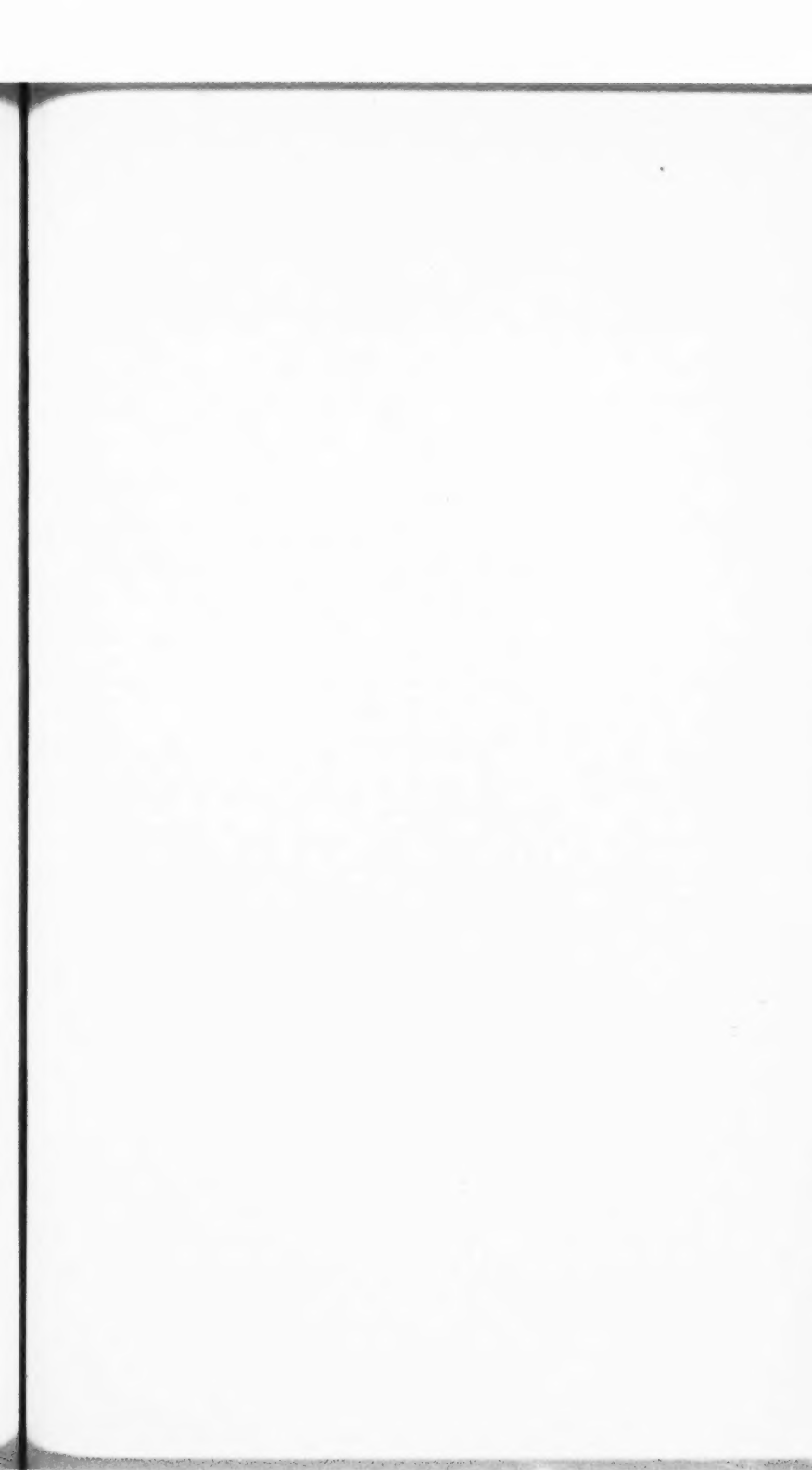
Article I, Sec. 2.	103, 109
Article VI, Sec. 24.	7

WORKS OF REFERENCE.

Blaine, James G., "Twenty Years of Congress".....	93
Curt's, Geo. T., "History of the Constitution".....	65-67
"Federalist"	60, 67, 82
Guizot, "Hist. de l'Origine du Gouv. Rep.".....	35
Munro, W. B., "The Government of the United States".....	90
Scott, A. W., in Harvard Law Rev.....	80
Watterson, Henry, "Marse Henry".....	90
Webster, Daniel, in "Congressional Debates".....	116
Webster, Daniel, in <i>Luther vs. Borden</i>	76

FOUNDERS OF CONSTITUTION.

Brearly, David.....	App. A
Butler, Pierce.....	55
Dickinson, John.....	52, 54, 56, 61
Ellsworth, Oliver.....	55, 62
Franklin, Benjamin.....	55
Gerry, Elbridge.....	App. A
Hamilton, Alexander.....	53, 67, 83
Iredell, James.....	63
Johnson, William Samuel.....	61
Lansing, John.....	51, 53
Lee, Henry.....	113
Madison, James.....	24, 51, 62, 67, 72, 83, 104, 113, App. A
Martin, Luther.....	51, 52, 53, 58, 59, 60, 61, 62
Mason, George.....	55, 104, App. A
Morris, Gouverneur.....	55, App. A
Paterson, William.....	61
Pinckney, Charles.....	57, 63, 72, 113, App. A
Pinckney, Charles Cotesworth.....	63
Randolph, Edmund.....	App. A
Read, George.....	52, 61
Rutledge, John.....	50, 55, App. A
Sherman, Roger.....	30, 51, App. A
Willson, James.....	54, 55
Yates, Robert.....	51, 53





In the Supreme Court of the United States

OCTOBER TERM, 1921.

No. 553.

OSCAR LESER, ET AL.,
PLAINTIFFS IN ERROR,
against
J. MERCER GARNETT, ET AL.,

DEFENDANTS IN ERROR.

ON ERROR AND PETITION FOR CERTIORARI TO THE COURT
OF APPEALS OF MARYLAND.

BRIEF FOR PLAINTIFFS IN ERROR.

STATEMENT OF THE CASE.

1. THE PETITION.

This case arises upon a petition authorized under the Maryland statutes filed in the Court of Common Pleas, a court of record sitting in the City of Baltimore, by a number of the citizens, voters and taxpayers of the State of Maryland, praying that the names of two women, registered over the protest and challenge of one of the petitioners as qualified voters in the 7th precinct of the 11th ward of said city, be struck from the registry on the

ground that being women they were not qualified to vote under the law of the land (Rec., p. 1).

2. THE MARYLAND CONSTITUTION.

The Constitution of Maryland limits the right of suffrage to adult male citizens of sound mind, not convicted of larceny or other infamous crime or bribery of voters or illegal voting, and possessing certain qualifications as to residence, which, at the time of filing the petition, it is conceded that the two women challenged, Cecilia Streett Waters, a white woman, and Mary D. Randolph, a colored woman, both possessed (Const. Md., Art. I, Sees. 1, 2, 3).

The Maryland Constitution adopted in 1867 contains in its Declarations of Rights the following:

Article 2. The Constitution of the United States, and the laws made or which shall be made in pursuance thereof, and all treaties made or which shall be made, under the authority of the United States, are and shall be the supreme law of the State; and the judges of this State, and all the people of this State, are and shall be bound thereby, anything in the Constitution or law of this State to the contrary notwithstanding.

Article 4. That the people of this State have the sole and exclusive right of regulating the internal government and police thereof as a free, sovereign and independent State.

3. REPUGNANCY OF THE ACTION OF STATE AUTHORITIES TO THE CONSTITUTION OF THE UNITED STATES.

Petitioners averred that the so-called 19th Amendment to the United States Constitution under and pursuant to which alone the defendant board of registry claimed the right to register the said women was not at the time of said registration (October 12, 1920), and is

not now a part of the Constitution or of the law of the State, but that both it and the action of the board in enforcing it are contrary to the Constitution of the United States, and hence of no validity.

The reasons for this repugnance are as follows:

1. The Amendment not only is beyond the general scope of the grant of power to amend contained in Article V of the Federal Constitution, but also it operates to deprive the State of Maryland of its suffrage in the Senate without its consent, and to prevent said State from even giving or refusing its consent thereto, or to other amendments, and hence is excluded by the proviso in Article V from the scope of said grant, at least as to any non-consenting State.

2. The Amendment was not lawfully ratified by the Legislatures of three-fourths of the States as provided in Article V, and hence was not and is not a part of the Constitution, and it is therefore contrary to the Constitution to enforce it as such.

4. AMENDMENT REJECTED BY MARYLAND.

The General Assembly of Maryland at its regular session of January, 1920, refused to ratify said amendment, and rejected it as an amendment unauthorized under Article V and repugnant to the spirit and purposes of the Federal Constitution in that it destroyed the right of self-government belonging to the people of Maryland which the Constitution was ordained to preserve and perpetuate.

The resolution of rejection appears in the Record (pp. 8, 10).

5. PROCEDURE UPON THE PETITION.

The Court of Common Pleas after a full trial dismissed the petition. An appeal was taken to the Court of Appeals of Maryland, the highest Court in the State, and the defendants there raised again, as they had done below, the question of the jurisdiction under the Maryland statutes to decide the matter and of the legality of the procedure adopted. Both the jurisdiction and procedure were sustained by the Court of Appeals (Record, pp. 149, 151), as they had been below, and a decision rendered to the effect, first, that the Amendment was indistinguishable in principle from the 15th Amendment, and that as this Court had, as they found, in effect sustained the validity of the latter as being authorized under Article V, that question was no longer open, and, secondly, that upon due consideration of the Record the votes of Missoari and West Virginia were lawfully given and counted in the affirmative and whether that of Tennessee was so given or not was unnecessary to be decided because it appeared that Connecticut had subsequently ratified, making a total of 36 states irrespective of Tennessee (Record, pp. 156, 160).

The petitioners, now plaintiffs in error, prosecuted a writ of error to bring the Record before this Court, on the ground that the action of the State authorities, i. e., the Board of Registry, in giving effect to a measure as a part of the Constitution of the United States and hence of the supreme law of the land, within the State of Maryland, which by the proper construction of Article V and the other articles of the Constitution could not have been validly adopted, at least without unanimous consent of the States, and which in fact was not validly adopted by the Legislatures of 36, or three-fourths of the States, as required by Article V, was an act repugnant to Article V and to the whole Constitution.

Out of abundant caution, as the jurisdiction of this Court upon writ of error was questioned by defendants in error, plaintiffs in error also submitted a petition for the issuance of the writ of certiorari, concerning the right to grant which writ in this case there has been and can be no question.

(Judicial Code, Sec. 237, as amended by Act approved September 6, 1916, 39 St. 726).

6. THE FACTS SHOWN.

I. Nature of the Evidence.

At the trial in the Court of Common Pleas it was stipulated that certain printed and documentary evidence might be offered without more formal proof to show, (1) the provisions of the Constitutions of other States, (2) the law of such States as evidenced by the decisions of their courts of last resort, (3) the contents of the Senate and House Journals of the West Virginia Legislature, at the extraordinary session of 1920,—reservation being made of the right to object to the admissibility of such evidence as irrelevant.

In addition, both sides offered certified transcripts of the Journals of the Senate and House of Representatives of Tennessee, so far as they affected questions of ratification or failure to ratify the Suffrage Amendment. These transcripts differed in that the transcript first offered by Petitioners (pp. 29-86), certified by the clerks of the two Houses and the Secretary of State of Tennessee, on October 27, 1920, purports to be a complete record of all action taken at the session, the transcript offered by Defendants (pp. 113-129) purports to contain only such part of the proceedings as the Governor of Tennessee saw fit to transmit to the Secretary of State of the United States on August 24, 1920, accompanying his certification bearing that date (p. 114), and the tran-

script offered in rebuttal by Petitioners (pp. 131-142), purports to contain the proceedings of the Tennessee House from August 31st to September 2nd, inclusive, as transmitted to the Secretary of State of the United States, at the request of the House, by the Governor, on September 3rd, 1920.

There is no discrepancy between either of the transcripts offered by Petitioners, but the transcript offered by Defendants contains much matter that in the Petitioners' complete transcript appears as having been expunged by the House, and also there is a discrepancy between the record of the same vote, upon the motion to reconsider, in the expunged portion of the Petitioners' transcript (p. 39) (reappearing as part of a message from the House in the Senate Journal, at p. 77), and in the Defendants' transcript (p. 128). In the former it appears that on a motion to reconsider the vote of ratification, 58 members being present, and 66 constituting a quorum, under the Tennessee Constitution, and the Speaker having ruled the motion to reconsider out of order for lack of a quorum (p. 37), and being overruled on appeal (p. 38), the motion to reconsider the vote in favour of the resolution of ratification (pp. 33-34) failed by the vote of *49 noes to 9 ayes*. In the Defendants' transcript this vote is totalled as *50 noes to 9 ayes* (p. 128), though the appended list of voters contains only *48 names of those voting no*.

The total membership of the House is 99.

II. Petitioners' Evidence.

The material parts of the evidence offered by the Petitioners under the aforesaid stipulation or otherwise, over the objections of the Defendants as to relevancy, establishes the following facts (omitting all reference to the procedural steps under the law of Maryland, which

the Court of Appeals of that State has held sufficient to confer jurisdiction of the issues on the Court):

1. That the Constitution of West Virginia requires that "each House shall determine the rules of its proceedings" (p. 27).

2. That the Constitution of Tennessee contains the same provision and also fixes the number 66 as a quorum of the House (pp. 27-8).

3. That the Constitution of Tennessee contains the following:

"Article II, Section 32. Amendment to Constitution of the United States:

No convention or general assembly of this State shall act upon any amendment of the Constitution of the United States proposed by Congress to the several States; unless such convention or general assembly shall have been elected after such amendment is submitted" (p. 27).

It appears in evidence (pp. 54, 65) and is conceded (p. 157), that the General Assembly which acted on the amendment had been elected *before* the amendment was submitted or proposed by Congress.

4. That the Constitution of Missouri contains the following:

"Article 2, Section 3. Local self-government not to be impaired. That Missouri is a free and independent State, subject only to the Constitution of the United States; and as the preservation of the States and the maintenance of their governments are necessary to an indestructible union, and were intended to co-exist with it, the Legislature is not authorized to adopt, nor will the people of this State ever assent to any amendment or change of the Con-

stitution of the United States which may in any wise impair the right of local self-government belonging to the people of this State" (p. 28).

5. That all the States which have gone through the form of ratifying the amendment or are claimed to have done so, are governed under written State Constitutions whose own amendment in each case requires ratification by the vote of their own qualified electors (p. 28).

6. That the Legislature of Tennessee met at the call of the Governor in extraordinary session on August 9, 1920. That a resolution of ratification of the proposed suffrage amendment was passed by the Senate on August 13th (p. 67). That on August 18th this resolution came up for consideration in the House of Representatives and a motion to table the same failed by a tie vote of 48 to 48 (p. 33). That on the same day the resolution was concurred in by the vote of 50 to 46 (p. 34), including Mr. Speaker Walker in the majority, he having changed his vote from "no" to "aye," and entering on the journal a motion to reconsider (p. 36). That on Aug. 21st, in a House with only 58 members present, the motion to reconsider was brought up, but ruled out of order by the speaker, owing to the absence of a quorum, but the members present, on appeal from that decision, overruled it, and by a vote of 49 to 9 defeated the motion (p. 39). That on August 31st, 91 members being present (p. 40), by a vote of 47 to 37, with 6 present and not voting, expunged from the journal all proceedings of the House on the 21st when no quorum was present except the rolleall showing no quorum to be present and the points of order made and the rulings thereon, and therefore expunged the record of the above attempted defeat of the motion to reconsider (pp. 40-42). That on the same day, August 31st, the House then by vote "supplied," i. e., produced a copy of the Resolution of Rati-

fication, which the quorumless body had previously sent back to the Senate, called up the motion to reconsider the vote by which it had been passed on the 18th, and passed the motion to reconsider, without a division (pp. 43-44). That immediately thereafter, by a vote of 47 to 24, with 20 present and not voting, the House "non-concurred" in the Resolution of Ratification. That the House then directed its clerk to notify the Senate of its non-concurrence (p. 46).

That the Senate refused to accept the message of non-concurrence by the House and returned it, but the House insisted, and the Senate subsequently received the same "without undertaking to determine the validity or invalidity of the action of the House," and "out of courtesy and deference" to that body (pp. 47, 81, 82).

That the Governor of Tennessee afterwards, on the 3rd day of September, 1920, at the request of the House, transmitted to the Secretary of State of the United States a transcript of all entries on the House Journal for August 31st and subsequent days, containing the resolution expunging the matter referred to, the adoption of the motion to reconsider and the vote of "non-concurrence" in the Senate Resolution of Ratification (pp. 131-142).

7. That the Legislature of West Virginia met at the call of the Governor in extraordinary session on February 27, 1920. That on March 1st a resolution introduced in the Senate to ratify the amendment was defeated by a vote of 15 to 13, two members being absent (p. 89). Mr. Harmer had changed his vote from "aye" to "no" in order to move to reconsider (p. 90), which motion he made upon March 3rd (p. 93). The motion to reconsider was then voted on and after efforts to delay the announcement of the final result had failed,

the vote was announced as 14 to 14, defeating reconsideration (p. 96).

That on March 3, 1920, the House adopted a resolution of ratification (p. 105), practically *in totidem verbis* with the resolution which the Senate had defeated.

That on March 8, 1920, a message from the House received by the Senate announced the adoption of the House resolution and requested the Senate's concurrence (p. 97). That on March 10th the House resolution "coming up in regular order for consideration was read by the clerk" (p. 100), and on the question, "Shall the resolution be adopted?" Mr. Gribble made a point of order based on the following Senate Rule (p. 100. Rule on pp. 97 and 106):

"Rule 52. The question being once determined must stand as the judgment of the Senate, and cannot during the session, be drawn again into debate unless reconsidered, and it shall be in order for any member voting with the prevailing side to move a reconsideration of the same within two succeeding business days."

The point of order was debated (p. 100) and the President of the Senate stated (p. 101) that he had studied the question and consulted lawyers, and that "it has placed me in such a position that I hardly know what to do; so I have determined instead of deciding this point of order myself, to submit it to the vote of the Senate and ask them to express just what they believe in the matter. I am therefore going to ask the clerk to call the roll, upon what the rule is."

Objection was immediately made to the president's refusal to rule on the point of order, and those passages of "Reed's Rules of Order" which formed a part of the Rules of Procedure of the Senate (Rules 183 and 184,

p. 106) were quoted to the chair, providing that when a point of order is made it is to be decided by the chair subject to appeal. Nevertheless the chair persisted in refusing to rule and directed the clerk to call the roll (p. 102), whereupon on the point of order there were 14 ayes and 15 noes, including the president among the noes.

The rolleall on the resolution then followed, showing 16 ayes and 13 noes, Mr. Gribble having changed his vote from "no" to "aye" in order to move to reconsider. Another member, however, made the motion immediately and it was defeated. An order was then passed to communicate to the House the adoption of the resolution by the Senate (p. 102).

S. That by the law of West Virginia, as evidenced by the decisions of its Supreme Court of Appeals, in *Osborne vs. Staley*, 5 W. Va. 85, the only final evidence of whether a bill has passed the Legislature (if the fact of its passage is disputed) is in the journals of the Houses. This evidence is held to be superior to that of the authentication of the act (p. 107).

Also that by the law of West Virginia, evidenced by the decision of the same Court in *Smith vs. Mitchell*, 69 W. Va. 481, where a constitutional provision requiring that a bill should have three readings on different days in each House was under consideration, and an act was challenged as never having been passed for lack of such readings, and it appeared that the same measure had been introduced as a separate bill in each House and each of these bills had a less number of such readings, though each House had read three times the same measure either as a House bill or a Senate bill, the Constitution of the State was gratified because the two bills constituted only one, being identical. It was also held

in this case that where after passage of the bill by the Senate a motion to reconsider the vote was made under Rule 52, but the bill had already been sent to the House, where it originated, by authority of the Senate, and the House had sent it to the Governor, who had signed it, the motion to reconsider was no longer to be deemed pending as a bar to the finality of the Senate's action, *because* the matter had been placed by their own authority beyond their own control.

The case is offered to prove that the law of West Virginia is, that to ascertain in a disputed case whether a measure had passed their Legislature, the Courts must look to both the journals and the rules of that body to learn whether in fact it passed the two Houses in accordance with their rules and their true interpretation; and further, that two identical measures offered in both Houses are in contemplation of the law governing their passage only one single measure.

Hence it is contended there never was but *one question* before the West Virginia Senate, namely, ratification of the amendment. The Senate refused to ratify, and then refused to reconsider its refusal, and by its rules, which are law in that State (whatever they may be elsewhere), and whose violation may be inquired into by the Courts, that ended the matter. "The question could not again be drawn into debate," and the subsequent proceedings were nugatory.

Further it is contended that the point of order raised against "drawing the question again into debate" was well taken, and whether well taken or not, the rules still required that the chair pass upon it. The chair refusing to do so, and so violating the rules, and further, in violation of them, submitting the point of order to a direct vote, that vote was purely nugatory, and the point of

order has never been disposed of. This renders void because out of order the subsequent vote purporting to pass the resolution.

All this is matter of West Virginia law alone, based on the evidence of that law furnished to the Maryland Court for its information, in the shape of cases cited (p. 107).

If this evidence is given what we contend is its legal effect, it appears that judged by the standards of West Virginia for ascertaining whether its Legislature did or did not pass a certain measure, as a matter of *law in West Virginia*, that is to say, as a *matter of fact* viewed from the outside, the West Virginia Legislature failed to adopt the resolution.

9. That the law of Tennessee, as evidenced by the decisions of its Supreme Court, cited to the Court below, namely, *Brewer vs. Huntingdon*, 86 Tenn. 732; *State vs. Algood*, 87 Tenn. 163, decided by Judge, later Mr. Justice LUTON, and *Webb vs. Carter*, 129 Tenn. 182, in regard to the criterion by which it is to be ascertained whether or not a certain measure passed the Legislature or failed of passage, has been determined as follows:

(i) Where it appears affirmatively, by entries on the journals, that an act was rejected in either House, it is void, although it may also appear by proper journal entries, that it was signed by the respective speakers in open session and that fact noted on the journals, and that it was approved by the Governor (86 Tenn. 732).

(ii) That no vote for or against the final passage of a bill is to be regarded as final, if a motion to reconsider said vote has been duly entered, until such motion is disposed of. Where such motion to reconsider the rejection of a bill has been entered, but its final fate is not affirmatively shown by the

journals, then the subsequent signing of the bill in open session by the two speakers and its approval by the Governor gives rise to the presumption that the motion to reconsider prevailed, in the absence of affirmative evidence that it did not (87 Tenn. 163, 168, 169).

(iii) That where the journal shows, even presumptively, that no quorum was present when certain action was purported to be taken by the House, then such action is null and void, and could not be cured by subsequent action attempting to ratify what was done. That the Court may look to the House journal to ascertain whether a quorum was or was not present when it is alleged a bill was passed, and if it appears there was no quorum present the Court must declare the alleged act void (129 Tenn. 182, 187, 208).

NOTE: There is no evidence whatever of the Resolution of Ratification in this case having been signed by the speakers in open session, as Mr. Speaker Walker never signed it, or admitted its passage. The journal on the other hand affirmatively shows, first, the absence of a quorum when the motion to reconsider was first voted on; second, the fact that with a quorum present the House subsequently passed the motion to reconsider, and defeated the resolution.

10. That the Secretary of State of the United States refused to consider any question as to the fact of ratification by any Legislature or the validity of such action on its part, provided that the "proper authorities of the State," whom he does not otherwise define, furnish the State Department with "official notice" that their State Legislature has ratified (p. 109).

III. Defendants' Evidence.

1. The Defendants first offered the Proclamation by the Secretary of State of the United States, dated

August 26, 1920, to the effect that the Amendment had been ratified by Legislatures of "three-fourths of the whole number of States in the United States" and had "become valid to all intents and purposes as a part of the Constitution" (p. 110).

The States enumerated, 36 in number, include Missouri, Tennessee and West Virginia, also Texas and Rhode Island, which are subject to special considerations hereinafter to be mentioned (post, pp. 102, 108-9).

2. The Defendants also offered a copy of the certificate received by the Secretary of State of the United States from the respective chairmen of the Joint Committee on Enrolled Bills of the Senate and House of Delegates of West Virginia (p. 113, see p. 103), containing a resolution of ratification of the proposed amendment purporting to have been adopted by the Legislature of that State.

3. Also a copy of the certificate received by the Secretary of State of the United States from Gov. A. H. Roberts, of Tennessee, dated August 24, 1920, certifying that "Senate Joint Resolution No. 1" (of which a copy is attached, purporting to ratify the proposed amendment) "was passed and adopted by the * * * General Assembly of the State of Tennessee, * * * thereby ratifying said proposed Nineteenth Amendment * * * *in manner and form appearing on the Journals of the two Houses of the General Assembly of the State of Tennessee, true, full and correct transcript of all entries pertaining to which said Resolution are attached hereto and made part hereof*" (R., p. 114).

Attached is the transcript referred to (R., pp. 116-128) which as hereinbefore shown (ante, Brief, p. 6), is not "true, full and correct," but is contradicted in im-

portant particulars by the complete transcript furnished by Petitioners.

4. The Defendants further offered in evidence (p. 129) a copy of a certificate received on or about the 14th of September, 1920, by the Secretary of State of the United States from the Secretary of State of Connecticut, showing that on that date (subsequent to the Proclamation) the Legislature of Connecticut had ratified the Amendment.

IV. Rebuttal.

The Petitioners then offered in rebuttal a copy of the certificate received on or about September 7, 1920, and sent on or about September 3, 1920, by Gov. A. H. Roberts, of Tennessee, to the Secretary of State of the United States, hereinbefore referred to (ante, Brief, pp. 6, 9) and containing the Journal of the Tennessee House for days subsequent to those included in the previously forwarded transcript, and showing that a part of the former entries had been expunged and that the House had reconsidered and defeated the Resolution of Ratification (R., pp. 131-142).

7. THE PROPOSITIONS OF LAW PRESENTED BELOW.

These are contained in 13 Prayers offered by Petitioners and rejected by the Court, and are found on pages 164-8 of the Record. They will be hereafter discussed under the appropriate headings.

SPECIFICATION OF ERRORS.

All the errors set forth in the Assignment of Errors (R., p. 164) are relied on as grounds of reversal, but they are here more specifically restated:

1. The Court below erred in holding that the Nineteenth Amendment cannot be distinguished in the principles applicable to the question of its validity, from the Fifteenth.

2. The Court below erred in holding that when the Supreme Court assumed the validity of the Fifteenth Amendment it necessarily decided that it was within the power to amend regardless of the consent of the several States or of their people.

3. The Court below erred in refusing to consider or pass upon the contentions (a) that the Nineteenth Amendment was beyond the scope of the express power to amend, and (b) that it would so operate as to fall within the express prohibition upon the exercise of that power as applied to non-consenting States, upon the ground that those contentions had already been precluded by decisions of this Court.

4. The Court below erred in holding in effect that an express prohibition in the Constitution against depriving any State without its consent of its equal suffrage in the Senate, which would be demonstrably violated by a measure conferring the power of choosing the State's representatives in the Senate upon persons on whom the State and the people thereof had not conferred it, without the State's consent, must be disregarded as no longer in force, merely because the State or its citizens had never legally protested against the operation of another measure,—the Fifteenth Amendment,—which forbade discriminations based on race, colour or previous condition of servitude, and which for half a century had been acquiesced in universally and so consented to by States and people as a part of the settlement of the issues involved in the late Civil War.

5. The Court below erred in holding in effect that the intention of the people of the United States in adopting the Constitution, to establish an indestructible union of indestructible States, might be nullified by the adoption of amendments destructive even of the corporate existence of such States,—for the reason that they disfranchise in whole or in part the electorate of those States through whom alone the corporate will can be expressed, and by whose express or implied sanction alone any corporate act could be performed,—because of the previous adoption of a certain amendment,—the Fifteenth,—which might measurably have had that effect and which might have been, but for nearly half a century was not, objected to by or on behalf of the people of any State on that ground.

6. The Court below erred in holding that the recognition of the limits which the people of Missouri had prescribed to the action of their Legislature in giving the assent of their State to proposed amendments to the Federal Constitution would nullify, destroy or amend the power of amendment delegated in Article V of the Constitution.

7. The Court below erred in holding that the Constitution prohibits the people of the several States from withholding from their Legislatures respectively the right to grant the assent of such States to such Federal Amendments as change the source of the governing power of those States.

8. The Court below erred in holding that the people of the several States may not take steps to preserve their right of local self-government by forbidding their respective Legislatures to surrender such right by ratifying Federal Amendments that might impair or destroy it.

9. The Court below erred in holding that the refusal by the people of a State to permit their own Legislature to ratify an amendment destroying or impairing their right of local self-government, is an attempt by the people of such State themselves to exercise the power of amending the Federal Constitution.

10. The Court below erred in holding that the people of a State may not refuse to permit a Legislature elected by them before a given amendment has been proposed to grant to it the assent of their State, and provide that only a Legislature subsequently elected shall have such power.

11. The Court below erred in failing to hold that, since Article V imposes no duty upon the several States either to ratify or to act upon Federal Constitutional Amendments, but leaves it wholly to the States to determine "when," if ever, the States either by their own Legislatures, or by Conventions which can only be called or elected by the States themselves under their own laws and at their own discretion, shall or may grant their assent to such proposals, the States are at liberty under the Federal Constitution to fix the *time when* either the Legislatures or Conventions, as the case may be, shall be called together to act in such matter, and that when they have so fixed such time and by reason of the violation of such provision an act purporting to ratify an amendment is void under the law of the State, it cannot be considered as an act that grants the assent of the State to such amendment.

12. The Court below erred in failing to hold that, since Article V *imposes* no duty to ratify, but leaves to the States in their discretion the right to fix the *time when* their Legislatures may ratify Federal Constitutional Amendments, it leaves to the States the right to

say that their Legislatures shall *never ratify* such amendments as may impair the sovereignty or right of local self-government of the people of such States.

13. The Court below erred in ruling upon the facts and the law of West Virginia offered in evidence, that the Senate of that State had passed the resolution of ratification.

14. The Court below erred in ruling that in the matter of ratifying amendments any Legislature is not subject to its ordinary rules of procedure applicable to the accomplishment of any act of that body, or that those rules may be disregarded in determining whether such act of assent has taken place, although by the law of the State attempted action in disregard of such rules is deemed to be null and void.

15. The Court below erred in holding that the question of ratification *vel non* by the Legislature of Tennessee was not necessary to be decided in this case.

16. The Court below erred in holding that none of the prayers offered by the Petitioners below presented propositions necessary to be decided in this case.

17. The Court below erred in sustaining the action of the trial Court in refusing all of the prayers of Petitioners.

ARGUMENT.

- I. THE NINETEENTH AMENDMENT IS INVALID AS EXCEEDING THE LIMITS OF THE POWER TO AMEND THE CONSTITUTION OF THE UNITED STATES DELEGATED IN ARTICLE V.

We shall discuss this question under two heads, first, that it exceeds the *Implied Limits* of the Amending Power, and second, that it exceeds the *Express Limits*, laid down in Article V of the Constitution itself.

1. THE IMPLIED LIMITS EXCEEDED.

a. No Decision Denies Doctrine of Implied Limits.

At the outset we are met by a categorical denial on the part of our opponents that there are any implied limits to the amending power.

In this denial they cannot fortify themselves with a single opinion of this Court. In *Rhode Island vs. Palmer* (253 U. S. 350), reported under the title "*National Prohibition Cases*," this Court held:

"The prohibition of the manufacture, sale, transportation, importation and exportation of intoxicating liquors for beverage purposes, as embodied in the Eighteenth Amendment, is within the power to amend reserved by Article V of the Constitution."

We know of no other case in which the existence and extent of implied limits to this power was raised in which this Court expressed any opinion whatever upon either point. To the extent that prohibition of making or dealing in intoxicating liquors may be enacted by Constitutional Amendment, the limits of that power extend. How much further and in what directions, beyond the obvious and accepted bounds of previous amendments hitherto unchallenged, has never been decided.

In holding that National Prohibition did not exceed the limits of the power this Court did not see fit to give any reasons, so that the scope of the one decision bearing on the question cannot even be measured.

It was perhaps the part of wisdom to withhold such reasons. Thus was avoided any possible misconstruction that might prejudice the contest of other and more radical amendments, perhaps affecting, as does the one at bar, the sovereignty of the people, the source of all governmental power whatever.

Such contest involves far more than a mere shift of a portion of the "power of police" between the State agencies of the people (Legislatures) and their Federal agency (Congress) such as was there considered.

Obviously a mere denial of the existence of *implied limits* is based upon no judicial authority, and must stand or fall only as sustained or refuted by *history, analogy or reason*.

b. History Sustains the Doctrine.

i. *The Legislatures, Even of Three-fourths of the States, Were Never Supreme.*

"The people made the Constitution, and the people can unmake it. It is the creature of their will and lives only by their will. But this supreme and irresistible power to make or to unmake, resides only in the whole body of the people; *not in any sub-division of them*. The attempt of *any of the parts* to exercise it, is *usurpation*, and ought to be *repelled by those to whom the people have delegated their power of repelling it*." (i. e., the Courts.)

Cohens vs. Virginia, 6 Wheat. at 389.

What does this passage by Chief Justice MARSHALL mean except that the people are sovereign over the Constitution and over all powers therein granted, and that they have constituted the Courts as guardians of their sovereignty, charged with the duty of repelling all assaults upon it "from whatever source derived"?

A more exalted function has never been conferred upon any human tribunal.

But whom does MARSHALL mean when he says "the people"? He has himself told us:

"The Convention which framed the Constitution was indeed elected by the State Legislatures. But the instrument, when it came from their hands, was a mere proposal, without obligations or pretensions to it. It was reported to the then existing Congress of the United States, with a request that it might be submitted to a convention of delegates, chosen in each State by the people thereof, under the recommendation of its legislature, for their assent and ratification. This mode of proceeding was adopted; and by the convention, by Congress, and by the State Legislatures, the instrument (Constitution) was submitted to the *people*. They acted upon it in the only manner in which they can act safely, effectively and wisely on such a subject, by assembling in convention. It is true, they assembled in their several States—and where else should they have assembled? No political dreamer was ever wild enough to think of breaking down the lines which separate the States, and of compounding the American people into one common mass. Of consequence, when they act, they act in their States. But the measures they adopt do not, on that account, cease to be the measures of the people themselves, or become the measures of the State governments." (Italics are by MARSHALL, C. J.)

McCulloch vs. Maryland, 4 Wheat. 316 at 402.

The sovereign people have been here defined by MARSHALL, and in them alone, as he tells us, resides "the supreme and irresistible power to make or to unmake." The Convention could not do this. The State Legislatures, even, be it noted, *all* the State Legislatures could not do it.

"Much more might the legitimacy of the general government be doubted, had it been created by the States. The powers delegated to the State sovereignties (i. e., governments) were to be exercised by themselves, not by a distinct and independent sovereignty, created by themselves. To the formation of a league, such as was the confederation, the state sovereignties were certainly competent. But when, 'in order to form a more perfect union,' it was deemed necessary to change this alliance into an effective government, possessing great and sovereign powers, and acting directly on the people, the necessity of referring it to the people, and of deriving its powers directly from them, was felt and acknowledged by all." *Ibid.*

Madison, in the Virginia Convention, in advocating ratification, said:

"Who are parties to it? The people * * * but not the people *as composing one great body*, but the people as composing thirteen sovereignties."

3 *Ell. Deb.* 99.

If all the State Legislatures could not "make" the Constitution, shall it be now contended that three-fourths of them can "unmake" it, by ratifying amendments repugnant to and destructive of its principles and purpose?

It is answered that the people have once and for all granted to three-fourths of the Legislatures acting upon proposals of the Congress the same omnipotence that they themselves possessed when they made the Constitution. That is, they bestowed on their creatures their own power, exclusively. Did MARSHALL believe this when he said, "the supreme and irresistible power to make or to unmake resides only in the whole body of the people"? Did he mean a two-thirds majority in Con-

gress, and the Legislatures of three-fourths of the States, elected often without a thought of the question of an amendment which might later be proposed to them by the Congress, perhaps called into special session in a political exigency for the purpose of amending the very law under which they existed, and which they were by the people of their own States forbidden to change?

Did the people of the several States in adopting the Constitution ever dream that they were setting up the Legislatures, not necessarily even of their own States, but of *other* States, as a power supreme over themselves? Was the creation of a National Government intended to endow the General Assemblies of *some of the States* with an omnipotence that the General Assemblies of *all the States together* had never claimed?

Lastly, did the people of the several States, who ratified the Constitution, ever dream that they had endowed the General Assemblies of *some of the States*, acting upon proposals of the Congress, with power to disfranchise the very people who by their votes had adopted the Constitution, or to force those voters to share their power with persons whom the people in the respective States had by their own freely adopted Constitutions excluded from this power? Did they dream that a qualification of their own suffrage might not only be thus imposed upon them by the external power of the Legislatures of three-fourths of *other States*, but also thereafter *eternally maintained by the Legislatures of one-fourth of the States plus one*? Did they think it would be possible to write into the Constitution such a restriction on the right of voting that a mere handful of legislators distributed among 13 out of 48 States in the Union,—not more than about 200 men,—could forever prevent the people from either enlarging or restricting that right? Did they realize that one-fourth

of the Legislatures plus one could prevent the voters who by their own State Constitutions might exercise the suffrage from acting at all, because by the mere will and power of their creatures,—of their delegates,—or of the delegates of other States,—they had been deprived of their own right to vote,—of their voices as members of the sovereign people?

Certainly a true interpretation of the history of our Constitution would preclude any construction of its granted powers that would subject the suffrage, which is the ultimate and basic expression of the sovereign will, to any control whatsoever *except the control wherein the Constitution found it and left it*,—the control of the sovereign people, who are not a “common mass” and “of consequence, when they act, act in their States.”

Any other construction necessarily denies the ultimate sovereignty of the people of the United States, and vests it in a fraction of the Congress and a number of the Legislatures, enabling these bodies to “unmake” the Constitution and substitute therefor any creation of their fancy.

For if three-fourths of the Legislatures can not only change their own constituencies by depriving some of their constituents of the right to vote or by conferring the same right on others, but also can change the constituencies of the remaining Legislatures and so change the entire source of power both in the Nation and the several States, they are obviously superior to the people themselves. The people can act only by their permission. The choice of representatives no longer belongs to the people, but to such individuals as those “representatives” may select. And if the Legislatures of three-fourths of the States see fit to disfranchise a majority of the people of all the States, thenceforward

the people or a majority of them will be excluded from all power as long as more than *one-fourth* of the Legislatures see fit to keep them excluded.

Would any student of American history contend that the people at any time intended to bestow upon State Legislatures such power? It is true that some State Constitutions could be amended by the acts of two successive legislatures, but such a provision of necessity includes an intervening election, i. e., an appeal to and sanction by the people. In Colonial times some of the Provincial Legislatures could by their single act fix or alter the qualifications for suffrage, as did the General Assembly of Maryland by Act of 1716, Ch. 11. Possibly such power in some instances survived the Revolution for a few years. But it applied only to the very constituency of the Legislature concerned. Since those days every State without exception has forbidden its Legislature without consulting the people in some way to do any such thing. The denial of power to Legislatures to alter the right of suffrage of their own constituents has been absolutely universal for well over a hundred years, and practically so from a period antedating the Constitution. If then the American people, since they became independent, have never shown a disposition to let the Legislatures of their own States exercise such power, how could they be supposed to have conceded it to the Legislatures of any number of States other than their own and in such fashion that it might be exercised utterly regardless of their own will?

History clearly supports the doctrine that no powers granted to Congress or State Legislatures or both by the American people were ever intended to be so broad as to exalt the representative over the people represented, and permit him in the name of the people to assume the sovereignty over them.

ii. *The Conventions, Even of Three-fourths of the States, Were Never Supreme Over the People of Other States.*

Article V provides in the alternative for the submission of amendments directly to the people, acting through State Conventions in the same manner as they acted when by their sovereign will they ordained the Constitution.

Would the same historical objections to an unlimited power of amendment obtain, if the ratification were to be accomplished by the people of three-fourths of the States in their respective conventions assembled?

History is equally clear on this point, and the very words of the Constitution supply the answer. Article VII reads:

“The Ratification of the Conventions of nine States shall be sufficient for the Establishment of this Constitution *between the States so ratifying the same.*”

It was never even pretended that the people of *some States*, even of three-fourths, or of twelve-thirteenths of them, could possibly impose the Constitution upon the people of other States that did not assent to it.

North Carolina and Rhode Island failed to ratify until after the Constitution was established and the Federal Government organized. It is incontestable that until they ratified they remained wholly free from its operation and obligation.

Why was this so, if the people had by a great preponderance of voices already adopted it? Simply because there was and there is *no such body* as the “*People of the United States*” viewed as “*one common mass.*”

"They assembled in their several States,—and where else should they have assembled? No political dreamer was ever wild enough to think of breaking down the lines which separate the States, and of compounding the American people into one common mass. Of consequence, when they act, they act in their States."

McCulloch vs. Maryland, *supra*.

Not "*when they acted*," but "*when they act*," now or at any other time. And he might have added, for it was a fact, "they act under the laws of their own States."

So acting they can "make or unmake," but "not any sub-division of them." "The attempt of any of the parts to exercise it (the power to make or unmake) is *usurpation*."

Cohens vs. Virginia, *supra*.

Does this mean that the people in Conventions in three-fourths of the States can unmake the Constitution? Were the people of Maryland, or of little Delaware, or recalcitrant Rhode Island, any more secure in their liberties from the actions of the *Conventions* of Virginia, Pennsylvania or Massachusetts, than from the action of the Legislatures of those comparatively great and powerful commonwealths? Could they have intended to grant to foreign conventions any greater powers than they intended to grant to foreign legislatures? If they intended it why did they not say so?

The clear answer of history is that they did not. They desired to adopt the Constitution, with a provision permitting its own amendment without the burden of the "liberum veto" of insignificant minorities such as had wrecked the Polish Republic and had brought their own confederation into the contempt due to impotence. But

that they desired or intended to enable any majority to disintegrate the Union by slaughtering any of the parts of which the Union was composed is inconceivable.

True, Roger Sherman expressed this fear in the Convention, but this was *before the Constitution had been completed*, and the vital and essential part of the proviso which he himself drew up and proposed to meet the danger was adopted with a *unanimity* which Madison tells us was "*dictated* by the circulating murmurs of the small States."

5th Ell. Deb. 532-4.

When the people of the several States had the Constitution before them for ratification it contained an unalterable provision to the effect that *the States, as political bodies capable of consenting or refusing to consent* must forever remain the members of the Union until they should severally consent to their own extinction.

No three-fourths majority of other States, however voiced or ascertained, could ever under the Constitution destroy the political integrity, the separate corporate existence, of the people of any one of the several States whose Union composed the United States of America.

The idea of "political dreamers" that the people of the several States might be "compounded into one common mass" was so effectually repudiated by the Convention itself in the secrecy of its sessions, that JOHN MARSHALL was more than justified in believing that no man had been "wild" enough to think of it.

"Of consequence" the ultimate and only sovereignty in America resides in the people of the several States. Their right severally to express their corporate will must be a right beyond the power of "any of the parts"

of the Union or any of the agents or delegates of the people, without their own several corporate consent, either to impair or to destroy.

iii. *The Sovereignty of the People Exercised Concurrently by States.*

The full exercise of sovereignty can only be by the concurrent action of the people of all of the several States. By that concurrent action, the people of each State acting in their State and under its laws, the Constitution was made. The people who made it, being "the people of the States of New Hampshire, Massachusetts," and the rest, so described themselves, until it occurred to the Convention that some of those States might not ratify and the Preamble would accordingly proclaim a falsehood. Hence the wording was changed to "The People of the United States," but the meaning was not changed. (1 Ell. Deb. 224, 298; 10 Fed. St. Ann., 2nd ed., 95).

They desired to form "a more perfect union," but it was to be a union,—“a perpetual union made more perfect,”—of free commonwealths,—of “indestructible States.” “No political dreamer” had thought “of breaking down State lines.” The sovereignty of the States remained what it had been before, except “as it had been abridged,”—not destroyed,—by the Constitution. Legally to destroy the concurrent sovereignty of the people of New Hampshire, Massachusetts, Maryland, and the rest,—that is the sovereignty of the people of the United States,—requires the concurrent act of the people of all of them.

Here lie the historical limits of the amending power.

c. Analogy Sustains the Doctrine.

In the absence of decisions bearing upon the extent of the amending power let us consider those that bear upon other powers, granted in terms equally absolute, in the Constitution.

i. *Limits of Taxing Power.*

Congress shall have power to lay and collect taxes, duties, imposts and excises. This power is subject to three express limitations,—apportionment as to direct taxes, uniformity as to duties, imposts and excises, while the taxation of exports is forbidden.

It might be inferred that the expression of these limitations excluded all others. This Court has held the contrary.

“The question is whether the power to lay and collect taxes enables the General Government to tax the salary of a judicial officer of the State, which officer is a means or instrumentality employed to carry into execution one of its most important functions, the administration of the laws, and which concerns the exercise of a right reserved to the States. We do not say the mere circumstance of the establishment of the Judicial Department, and the appointment of officers to administer the laws, being among the reserved powers of the State, disables the General Government from levying the tax, as that depends upon the express power ‘to lay and collect taxes,’ but it shows that it is *an original inherent power never parted with, and in respect to which the supremacy of that government does not exist*, and is of no importance in determining the question; and further, that being an original and reserved power, and the judicial officers appointed under it being a means or instrumentality employed to carry it into effect, the right and necessity of its unimpaired exercise, and the exemption of the officers from taxation by the

General Government, stand upon as solid a ground and are maintained by principles and reasons as cogent as those which led to the exemption of the federal officer in *Dobbins vs. Erie Co.* (16 Pet. 435) from taxation by the State; *for in this respect, that is, in respect to the reserved powers, the State is as sovereign and independent as the General Government.* And if the means and instrumentalities employed by that government to carry into operation the powers granted to it are necessary, and for the sake of self-preservation, exempt from taxation by the States, why are not those of the States depending upon their reserved powers, for like reasons, equally exempt from federal taxation? Their unimpaired existence in the one case is as essential as in the other. It is admitted that *there is no express provision* in the Constitution that prohibits the General Government from taxing the means and instrumentalities of the States, nor is there any prohibiting the States from taxing the means and instrumentalities of that government. In both cases the *exemption rests upon necessary implication*, and is upheld by the *great law of self-preservation*; as any government, whose means employed in conducting its operations, if subject to the control of another and distinct government, can exist only at the mercy of that government. Of what avail are these means if another power may tax them at discretion?"

The Collector vs. Day, 11 Wall. 113, 126-127.

Could any more perfect analogy be found, or would the language of the learned Justice (Nelson) be any less convincing if applied to the case at bar?

It is answered that this case involves the amending power, far higher in its nature than any mere power of Congress such as that to lay and collect taxes. But why is it a power of any higher nature? Has it any higher source? Are they not both powers delegated by the people of the United States in adopting the Constitution?

Neither has any existence apart from the Constitution itself. Granted that the amending power is of broader scope, does it transcend the "great law of self preservation" by which the Courts will protect the sovereign powers reserved to the States and the people thereof as fully as those granted to the Congress? As this Court said in the same case:

"Such being the separate and independent condition of the States in our complex system, as recognized by the Constitution, *and the existence of which is so indispensable, that, without them, the General Government itself would disappear from the family of nations*, it would seem to follow, as a reasonable, if not a necessary consequence, that the means and instrumentalities employed for carrying on the operations of their governments, for *preserving their existence*, and fulfilling the high and responsible duties assigned to them in the Constitution, should be left free and unimpaired, should not be liable to be crippled, much less defeated by the taxing power of another government, *which power acknowledges no limits* but the will of the legislative body imposing the tax."

Ibid. 125.

ii. *No Unlimited Power Granted by Constitution.*

If the existence of the States is indispensable to our continued membership in the family of nations, or, as expressed by this Court in *Lane County vs. Oregon*, 7 Wall. 71, if "without the States in union there could be no such political body as the United States" can this Court hesitate to "preserve their existence" even against "a power which acknowledges no limits but the will of the legislative bodies" which exercise it?

Mr. Justice MILLER, speaking for this Court in *Loan Association vs. Topeka*, 20 Wall. 655, at 663, said:

"The theory of our governments, State and National, is *opposed to the deposit of unlimited power anywhere.*"

Guizot, perhaps the most profound and accurate political philosopher of the 19th century, said:

"The true theory of sovereignty, that is, *the radical illegitimacy of all absolute power, whatever its name and station, is the principle of representative government.*"

Hist. de l'Origine du Gouvernement Représentatif, II, 12.

What is meant by these doctrines, except that the creature that exercises the power can never exalt itself over the creator that conferred it?

"Without this power (the establishment of the judicial department, and the appointment of officers to administer their laws) and the exercise of it, *we risk nothing* in saying that no one of the States under the form of government guaranteed by the Constitution could long preserve its existence."

Collector vs. Day, supra, 126.

How much would this Court risk in saying that without the power to determine who should have the right of voting, who should control its government, no one of the States could long preserve its existence? Surely the latter power is the more essential of the two.

The threat to the State's existence in either case comes from a power of equal dignity and pedigree. The people of the United States conferred both the power to tax and the power to amend. They themselves, who, "when they act, act in their States," who are not "one common mass" but a perpetual union of free self-governing communities, are immune from destruction as such self-governing people by either power.

Their right to govern themselves is a pitiful illusion if their representatives or the representatives of some of them can rob them all of their voice in such government.

iii. *Limits Implied From Necessity.*

The doctrine of *Collector vs. Day* cannot be regarded by this Court as obsolete. It has very recently been reaffirmed and amplified in *Evans vs. Gore*, 253 U. S. 245, 255, speaking by Mr. Justice VAN DEVANTER:

“True, the taxing power is comprehensive and acknowledges few exceptions. But that there are exceptions, besides the one we here recognize and sustain, is well settled. In *Collector vs. Day*, 11 Wall. 113, it was held that Congress could not impose an income tax in respect of the salary of a judge of a State court; in *Pollock vs. Farmers’ Loan and Trust Co.*, 157 U. S. 429, 585, 601, 652, 653, it was held—the full Court agreeing on this point—that Congress was without power to impose such a tax in respect of interest received from bonds issued by a State or any of its counties or municipalities; and in *United States vs. Railroad Co.*, 17 Wall. 322, there was a like holding as to municipal revenues derived by the City of Baltimore from its ownership of stock in a railroad company. None of those decisions was put on any express prohibition in the Constitution, for there is none; but all recognized and gave effect to a *prohibition implied from the independence of the States within their own spheres.*”

The case of *Evans vs. Gore*, *supra*, is in some ways the most suggestive and significant of all. It had been held that State instrumentalities, revenues and means of operation were immune from the taxing power, because without the States in union the United States would cease to exist. But would the United States cease to exist without a federal judiciary? Possibly not. The “Judges in every

State" are equally bound to protect and enforce the Constitution, and their ability and willingness to do so must be presumed. But if the federal judiciary is to remain in existence it *must remain independent* or the Constitution itself will rock on its foundations. It is precisely because, as MARSHALL said, that "*usurpation*" of the people's sovereignty must be "repelled by those to whom the people have delegated their power of repelling it," that those ultimate defenders of popular sovereignty must be protected from those who to compass their usurpation would be only too willing to bind and gag the guards.

The literal language of the 16th Amendment,—"*income from whatever source derived*,"—cannot be held by this Court to mean that the sovereignty of the people in their several States is to be wielded henceforth only at the discretion of the taxing power of Congress, or that those who alone can protect that sovereignty from such assaults may be stabbed in the back while performing that duty.

No power granted by the Constitution in whatever language has heretofore been held sufficient, directly or indirectly, to destroy the States without whose existence we would "disappear from among the family of nations."

iv. *Similar Necessity Limits Other Constitutional Powers.*

The amending power itself, whenever employed so as to give rise to a question whether its exercise had in effect destroyed the States has been held to have produced no such results.

In the *Civil Rights Cases*, 109 U. S. 3, this Court expressly refused to admit that the 13th and 14th Amendments in spite of their specific grants of power to Congress had authorized that body to "enact a municipal

code for the States." And yet their language literally construed was plainly susceptible of that very interpretation, as Mr. Justice HARLAN showed in his dissenting opinion, in regard to those rights of liberty and property which had been as he says "*granted by the nation* to the negro race by those Amendments." (Ibid 46, 56).

And in the *Slaughter House Cases*, 16 Wall. 36, 77, 78, this Court through Mr. Justice MILLER was even more emphatic, and held the argument from consequences against such a construction of the 14th Amendment might not ordinarily be "conclusive," but when "these consequences are so serious * * * so great a departure from the structure and spirit of our institutions; when the effect is to fetter and degrade the State Governments by subjecting them to the control of Congress, in the exercise of powers heretofore universally conceded to them of the most ordinary and fundamental character; when in fact it radically changes the whole theory of the relations of the State and Federal Governments to each other and of both these governments to the people; the argument has a force that is *irresistible*, in the absence of language which expresses such a purpose too clearly to admit of doubt."

If such indubitably clear language as the amendment did *not* contain had been used, a different question would have been presented to the Court, although there is no suggestion in the 14th Amendment of doing what MARSHALL said half a century earlier, "no political dreamer" had ever been "wild" enough to think of doing, i. e., of obliterating the States as the components of the Union. This task has been reserved to the "political dreamers" of a later age.

So this Court, through the long years, has repeatedly been called on to defend the States and their people, who are the sovereign people of the United States, from the

misuse by their agents of powers granted by themselves. In doing so this Court has hitherto had to rely only on the implied limitations based in final analysis on the fact that the American people are not a "common mass" but an aggregate of free self-governing communities expressive of their inherent sovereignty, which can only be exercised "safely, effectively and wisely" by community action.

If the example of the pitiful shipwreck of the vast "common mass" of humanity known as the Russian people is not sufficient to deter the leaders of our day and generation from abandoning the local self-government of our fathers and treading the path that leads to irresponsible power even over the precipice into which such power has always plunged, then the sacrifices of a thousand years to the cause of Liberty will have been offered in vain.

d. Reason Sustains the Doctrine.

i. *State Sovereignty Inherent, Not Permissive.*

"When the American people created a national legislature, with certain enumerated powers, it was neither necessary nor proper to define the powers retained by the different States. These powers proceed, not from the people of America, but from the people of the several States, and remain after the adoption of the Constitution what they were before, except so far as they may be abridged by that instrument."

Sturges vs. Crowninshield, 4 Wheat. 193.

That is to say the people, within their States, retained all the sovereignty which they by the collective action of their States had not conferred on their joint agent—the "national legislature." Did they retain this sovereignty as of right, or only by permission until by amendment that national legislature with the assent of some of the State Legislatures should take it from them?

We are not questioning the legitimacy of reapportioning powers between States and Congress. Congress is after all the mere creature and joint agent of the people of the several States. These people may see fit to vest the exercise of any governmental powers in any agency they may select. Where that agency is elected by them, as is the Congress, it would be doubly absurd to deny their power to vest in it any functions they choose. They may vest in Congress the power to tax, the power to raise armies or declare war, the power to regulate the liquor traffic, the power to enforce against the State *governments* such prohibitions of power as they have imposed on the latter.

The people of the States constituting the Union collectively, not as a mass, but as a Union of free peoples, are omnipotent. Through designated agents whom they have once unanimously authorized to act as such we may grant for the sake of argument that they may by appropriate action in three-fourths of the States transfer powers from one *agency* to another, or impose or remove prohibitions on their exercise. But it would be a contradiction in terms to say that they have empowered their agents, or any part less than the sum total of the States or free communities in Union which are the people, to abolish or restrict the power of the people themselves. That power remains, and it consists of this, *the power to select the agents* on whom any specific governmental powers are conferred. Deprive the people of the power of voting for the persons who are to make the laws under which they must live, and the sovereignty of the people is gone.

Concede that by amendment they may be so deprived, and their sovereignty does not exist.

ii. *Popular Sovereignty in England Distinguished.*

The case of England may be cited, but it is not apposite. England is governed not by a written constitution but by binding customs that in so conservative and ancient a society are practically an equivalent. If Parliament disfranchises voters, or enfranchises those who were not, its members must nevertheless spend their lives among the people affected by their action. Their responsibility is vividly personal. Social ostracism or even personal fear must make them responsible to the public opinion of their fellow-subjects. Besides which, use and wont are potent factors that cannot be disregarded.

Within our States we have a perfect analogy. State conventions once called into being, are within the sphere of State powers omnipotent. The Virginia Convention of 1901, to cite the most recent example, adopted a new Constitution and *proclaimed it as the law of the land*. This Constitution disfranchised many of the voters, but the substantial public opinion of the State approves and supports it. The practical responsibility of the members of such conventions, due to the fact that their acts affect the lives of all those among whom their lot is cast, is a nearly perfect safeguard against tyranny by any such bodies.

iii. *Irresponsibility of Amending Power Applied to Suffrage.*

But consider the amending power under our Federal Constitution. What responsibility does a legislator in California bear to the people of Maine? Will fear of their displeasure or hope of their approval govern his acts?

In voting to take from the Legislatures of both Maine and California a certain power and vest it in Congress the legislator affects directly his own constituents, and does not wholly deprive the people of the States of their real power, for through their representatives in Congress and especially through their inalienable suffrage in the Senate they can still directly participate in its exercise.

But in voting for an amendment that confers or that denies the right of suffrage, the California legislator is voting to dilute or to deny rights enjoyed by the citizen of Maine with which he has not only no concern, but which are a part of the inherent sovereignty of the people of Maine without the possession of which they can do no act whatsoever. This power to determine who shall govern them has been not transferred, but abolished. If Californians can deprive the men of Maine of their votes, or *vice versa*, where does *any* inherent sovereignty remain?

It is answered that such legislators in ratifying such amendments are still responsible to their constituents. But what if by their votes they have deprived their constituents of all political power, or so diminished it that they need fear them no longer? Above all, suppose the instant case, where the California legislator does not by his action affect presently his own constituents at all, sex distinctions having already been abolished by that State, but does directly contribute to deprive the male citizens of Maine, or of Maryland, of half their political power against their will,—what sanction exists for his conduct?

iv. *Indestructibility of States One of Purposes of Constitution.*

This Court has held in a memorable opinion by Chief Justice CHASE:

“ ‘The *people of each State compose a State*, having its own government, and endowed with all the functions essential to separate and independent existence,’ and ‘without the States in Union there could be no such political body as the United States.’ Not only, therefore, can there be no loss of separate and independent autonomy to the States, through their Union under the Constitution, but it may not unreasonably be said that the preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National Government. The Constitution, in all its provisions, looks to an *indestructible Union composed of indestructible States.*”

Texas vs. White, 7 Wall. 700, 725.

Although Chief Justice CHASE may not mean that three-fourths of the States could not compel a reapportionment of powers among the agencies which these indestructible States, i. e., the people who compose them, had created, he did mean that the sovereignty of the people of the States was indestructible under the Constitution or else no meaning whatever can be assigned to these words.

It has been argued that he was speaking of the Constitution as it then was. Granted. The Constitution contained Article V then as always, and yet he says, “The Constitution *in all its provisions* looks to an indestructible Union composed of indestructible States.” If this does not mean that the States cannot be destroyed under the Constitution we are at a loss to comprehend the words.

But if the Legislatures of California and thirty-five other States, who are in no way responsible to the people of Maryland can enact that certain persons on whom the people of Maryland have never conferred such right shall vote, or that *only* such persons shall vote, then they may deprive the people of Maryland of any voice whatever in their own government, and hence destroy a State that the Constitution was ordained for the purpose of preserving as an indestructible component in an indestructible Union.

"The Constitution in all its provisions *looks to*" such a perpetual Union of indestructible self-governing States. This signifies that in the deliberate judgment of this Court the *people intended to establish* such a Union of States.

This Court has expressly so held:

"The National Constitution * * * assumed that the government and the Union which it created, and the States which were incorporated into the Union, would be indestructible and perpetual; and as far as human means could accomplish such a work, *it intended to make them so.*"

White vs. Hart, 13 Wall. 646, 650.

If the people of the United States intended this, how could they have intended at the same time to grant to any agencies, State or Federal, or even State and Federal, the power to destroy either Union or States?

v. *Rule of Construction that Accomplishes Purpose of Instrument is Obligatory.*

One cardinal rule of construing general terms in all statutes, charters, grants, and instruments whatever, is this: to give the words such construction as will if pos-

sible produce the effect intended by the persons or body that employed the words, and not such as will produce a contrary effect.

“When investigating the nature and extent of the powers conferred by the Constitution upon Congress, it is indispensable to keep in view the objects for which those powers were granted. *This is a universal rule of construction applied alike to statutes, wills, contracts, and constitutions.* If the general purpose of the instrument is ascertained, the language of its provisions *must be construed with reference to that purpose and so as to subserve it.*”

Legal Tender Cases, 12 Wall. 457, 531.

“The great and leading intent of the Constitution must be kept constantly in view upon the examination of every question of construction.”

Ex parte Yerger, 8 Wall. 85, 101.

The only cases where the word “amend” has been so construed as to involve the idea of destroying the instrument amended, or nullifying its manifest purpose, are in Parliamentary Law, where it is usually legitimate for the express and well-understood purpose of defeating a proposed enactment, to move to “amend” by striking out all that follows the enacting clause.

If this action were taken by a statute in regard to a previously existing Act, the new Act would be called not an “amending” statute, but a “repealing” one. This has received judicial recognition, and it has also been said that a statute in derogation of the common law is not an “amendment” of the common law.

State vs. Hubbard, 148 Ala. 391, 394.

Of course there is a wide difference between the construction of general words such as “amend” in relation

to the acts of persons or bodies still in existence and capable of either totally changing or modifying their purpose as well as their acts, and the construction they would receive in relation to the changes to be introduced by others in instruments whose original creators are either dead or no longer capable of uniting or acting freely to express their views.

Where an irrevocable deed of trust, or a will, gives certain discretionary powers to trustees, or to devisees, to change the dispositions created, it is certain that the general purpose of the settlor or testator must be regarded in construing or measuring those powers. But a testator himself may by codicil to his will entirely reverse the purposes most clearly set forth therein. His own power of "amendment" is measured by the extent of his inherent right to "change his mind." That of his devisees must be measured by the extent of their *delegated* right to "change the mind" of their testator.

The analogy, we submit, is apt. A Legislature while in session can, subject to its rules of procedure, unquestionably "change its mind." It may therefore, after one or two readings of a bill, unless restrained by its rules, amend by striking out all the effective provisions, and thus nullify the bill's expressed purpose. It is like a testator still alive and of sound and disposing mind. But in regard to the power to amend some provision of the Constitution expressly granted to it, its operation is effective upon the previously expressed will of others, i. e., the people who adopted such Constitution, and hence must be governed by the purpose which they had in view when they conferred the power.

For example, the Constitution of Maryland (Article III, Section 57) provides as follows:

“The legal rate of interest shall be six per cent. per annum; unless otherwise provided for by the General Assembly.”

In construing this grant of authority to the General Assembly to change or “amend” a definite provision of the State Constitution, the Court of Appeals says:

“That the Legislature has the power to prescribe a rate of interest for all persons and all corporations either above or below six per cent. is not questioned. That is to pass a general law on the subject, but it has no power to authorize one person to charge six per cent. and another ten per cent. and another twenty-five per cent. The pernicious effects of such special class legislation are so obvious, that in the absence of plain language showing such to be the intention, *we are not to presume that either the framers of the Constitution, or the people who adopted it, meant to confer a power so extraordinary on the Legislature.*”

Citizens Sec. & Land Co. vs. Uhler, 48 Md. 455, 459.

In accordance with this simple and universal rule, the word “amend,” as applied to instruments created by another body, means make “better to carry out the purpose” of the creating power.

Livermore vs. Waite, 102 Calif. 113, 119.

The legislative right to “alter or amend” corporate charters, as reserved either in statutes or State Constitutions, is not unlimited, but must be exercised only so as better to carry out the primary purposes of the original act of incorporation.

Sinking Fund Cases, 99 U. S. 700, 720, and cases there cited.

Shields vs. Ohio, 95 U. S. at 324.

Zabriskie vs. Hackensack, 18 N. J. Eq. 178.

e. Summary.

The destruction of the States in Union, "without which there can be no United States," cannot fulfill the purpose of the founders. On the contrary, it thwarts their purpose and substitutes for a representative Federal Government and free States self-governing in local affairs, an irresponsible, unrepresentative, undemocratic tyranny, by bodies who legislate for other constituents than their own, and who cannot in the nature of the case be called to account by anyone.

The doctrine of an unlimited power of amendment in State Legislatures is a reincarnation of the ghost of Divine Right. It is based on the fiction of a Mass of Humanity, which never had any existence in fact, which never acted directly or by representation, but from which is supposed to flow to three-fourths of the Legislatures an unlimited flood of power, capable of swamping and obliterating the people of the several States in Union, and every institution, even the most sacred, which by their Constitution they intended to preserve.

The State Legislatures, if possessed of this unlimited potency of destruction, irresponsible to the alleged mass from whom this power flows (because it has no existence) and by hypothesis irresponsible to their own constituents whom they may flout at will, have become the most dangerous Frankenstein that any "political dreamer" was ever "wild" enough to invent.

The fact of our indissoluble, or undestructible Union, making us for National purposes, and with respect to the outside world, one Nation acting through the Federal Government, is not inconsistent with the denial of any form of irresponsible absolutism whatever in our land.

The War of the Revolution was fought to rid the land of a self-styled omnipotent legislature, the British Parliament, unrepresentative and *irresponsible* to the people of any of the Colonies, and capable of *destroying* their right of self-government.

It is inconceivable that those people within five years of the close of that war created voluntarily a new system of unrepresentative irresponsible absolutism capable of obliterating every vestige of their right of self-government.

Yet such a system the alleged almighty amending power is, in theory and in fact.

2. EXPRESS LIMITS OF THE AMENDING POWER.

a. History of the Proviso.

We do not insist further upon the implied limitations upon the power of amending the Constitution, for the reason that we are fully persuaded that the express limits laid down by Article V itself, when properly understood and construed, will be found sufficiently to protect the fundamentals of the right of local self-government. Those express limits, as contained in Article V, are as follows:

“Provided that no amendment which may be made prior to the year 1808 shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that *no state, without its consent, shall be deprived of its equal suffrage in the Senate.*”

It would hardly be right to construe these limitations without a complete historical view of the matters to which they refer, and the purpose with which they were adopted.

First, it is to be noticed that they all have reference to the famous compromises of the constitution. It is also of psychological interest to note that they are inserted in the inverse order of the importance of these compromises.

The continued existence of the slave trade for twenty years was certainly one of the causes of dispute in the Convention, but it is not one of those that went to the foundation of the Government itself. Nevertheless, through fear that the settlement effected among the gentlemen composing the convention, in favor of the two then undeveloped states of the far South,—South Carolina and Georgia,—might be upset by the already strong sentiment against the slave trade,—on the part of those who did not profit from it, and therefore could afford to consider it a great moral wrong,—Rutledge of South Carolina insisted that the power of amendment should be limited so that this compromise could not be annulled. (5 Ell. Deb. 532.)

Another of the important, though not fundamental, controversies in the Convention, was that which raged over the question of direct taxation. It is not quite clear why the principle of the apportionment of direct taxes according to the census should have been preserved against the amending power for only twenty years, if it was to be placed beyond the reach of amendment at all.¹ It is to be noted, however, that if this part of the proviso had not been limited in its applicability to the year 1808, but had been indefinite as to time, the Sixteenth Amendment could never have been proposed or adopted.

The remaining part of the proviso,—suffrage in the Senate,—however, is unlimited as to time; and is therefore perpetual in its application.

When the former part of the proviso had been adopted, it no doubt first occurred to the members of the Convention that, while they had guaranteed to some extent the

Note 1. It was feared that by a head tax on slaves Congress might accomplish abolition. The proviso therefore suggests that the framers did not contemplate that abolition could be directly accomplished by amendment else the proviso would have been broadened to prevent this.

permanency of two of the minor compromises made in the convention, there was yet no guarantee of the vital and essential compromise, without which the convention would have adjourned two months previously with an ignominious confession of failure, and no constitution at all would have been submitted to the American people.

As soon as this point was made and insisted on, it was covered by the broad and emphatic language hereinbefore quoted. The fight was, however, a stiff one. The old alignment of the small states against the great was formed at once, but the New York delegates, Yates and Lansing, had long since withdrawn, and Luther Martin was no longer present to guide and counsel the true Federalists. With these exceptions the fight was waged by the same delegates who had forced the compromise itself. The motion to insert the proviso was made by Roger Sherman of Connecticut.

Connecticut, New Jersey, Delaware, a majority of the New York delegation, and Luther Martin, who at times controlled the vote of Maryland, had formed the dauntless minority, who, by their steadfastness, unselfishness and ability, had extorted from the domineering majority, composed of the representatives of the great and powerful states, those provisions of the Constitution which went to preserve its federal form; and, in so doing, made possible the growth of a true national spirit among all the American people. Under pressure of their renewed insistence, the objections of Madison and others were abandoned, and the proviso, clinching the great compromise was unanimously adopted.

The whole debate upon the proviso is given in Appendix A, annexed to this brief.

b. History of the Suffrage in the Senate and the House.

The letter and speech of Luther Martin to the Maryland Legislature, published in the first volume of Elliott's Debates (p. 345, etc.), tells the story of the contest in the Convention between those who wished to preserve and those who would have destroyed the States. We cannot reproduce this document but we trust the Court will read it again before forming any conclusions upon the matter now in question.

The outstanding features of the story as told by Martin—and they have never been disputed by historians—are these: There was a school in the Convention that wished to substitute for the existing states and confederacy a strong centralized government, approaching, in fact, if not in name, a monarchy, with representative features. The local institutions already in existence were to be permitted to survive, but only so far and so long as the Central Government could more conveniently forego their exercise.

Some of the members of this school came from small states; and, although they were not unattached to their state constitutions, they feared that these constitutions were not likely to survive, in view of the great powers and influence of their large and populous neighbours.

George Read and John Dickinson of Delaware were two of these. The State of Delaware was then, as now, insignificant in size and importance and commercially dominated by the State of Pennsylvania. Dickinson was the author of the well-known "Farmers' Letters" that had prepared the public mind for the Declaration of Independence, for which nevertheless he did not at that time deem the country prepared. He, therefore, refused the honor of being one of the Signers. Notwithstanding

that, however, he took an active part in support of the Revolution, and earned the reputation of a true patriot. These men were undoubtedly frightened and oppressed by the tactics, and probably still more by the spirit, of the delegations from the three great states, supported by those from the Carolinas and Georgia, who controlled the proceedings. They felt that, under the circumstances, if state lines were obliterated, and the "States thrown into Hotchpot," the actual liberties of the citizens in every part of the continent would best be preserved. They felt that the selfishness and ambition of the already prevailing state governments constituted the greatest menace.

If, however, it should become practicable to secure such a Federal Constitution as would recognize and protect their integrity and their right of self-government from the overwhelmingly superior numbers and power of the large states, the small states were unanimous in desiring a solution so favorable to their ideals. In fact, their representatives felt that no other plan could hope to be ratified by their people.

The representatives of Delaware came to the Convention under the express restriction that they should not assent to any plan that destroyed the equal suffrage of their state, as then enjoyed under the Articles of Confederation. Delaware, therefore, united with the other small states of Connecticut and New Jersey, securing powerful support from New York, whose delegates, Yates and Lansing, overruled Hamilton, and took the side of their smaller neighbors. The support they received from Luther Martin, however, was almost more valuable still, although unfortunately Martin did not always control the Maryland delegation, though he frequently divided it.

The Virginia Plan,—so-called,—upon which the Convention as a Committee of the Whole first expended its labors, provided for a National Legislature consisting of two branches, of which one branch was to be elected “by the people of the several States * * * and subject to recall.” The second branch was to be elected by the members of the first branch from nominees submitted by the State Legislatures. Proportionate representation according to the “quotas of contribution, or the number of free inhabitants, as the one or the other may seem best, in different cases,” was to be the rule by which both branches of the Legislature were to be constituted.

The most vital change effected in this plan was that which restored the selection of the members of the second branch to the several states, instead of making it, mathematically speaking, a mere function of the first branch. In opposition to the proposed plan, a resolution was introduced by Dickinson, “that members of the second branch of the National Legislature should be chosen by the individual legislatures,” and it was unanimously passed on June 7th. (1 Ell. Deb. 165.) It is interesting to note that James Wilson, one of the greatest nationalist leaders, offered as a substitute for this a proposition to district the whole country irrespective of State lines, for the election of senators. His own State, Pennsylvania, alone supported this plan.

We, therefore, find that before the actual controversy as to the proportionate strength of the States in the two Houses had been brought to a head,—and even before it was finally determined whether there should be two houses at all, or only one, as was deemed more fitting in a purely federal Government,—the principle had been established that the members of each House were to be selected by the local authority, either of the people of the several States directly,—as in the case of the First

Branch,—or of the people of the several States through their State Legislatures,—as in the case of the Second Branch. In other words, the propositions,—and there were two of them, as above set forth,—that one branch of the National Legislature should be chosen by a power external to the States, was almost unanimously repelled before the real contest commenced, and such a proposition was never renewed in the Convention. Consequently, thus far at least, the Convention was practically unanimous, to the effect that the *suffrage of the States*, whether it was to be equal or proportionate, *was, and could only be in fact, the votes cast in the National Legislature by persons freely elected in their respective States, either by the electors qualified under the State-law to vote at their own elections, or by the Legislatures created by and depending upon the people of the States alone for their actual existence.* No suggestion that the States' electorate ought to be interfered with by an outside power when choosing representatives in *either branch* of Congress was ever made in the Convention of 1787, except to be almost unanimously defeated.

The motion of Gouverneur Morris for establishing the qualification of being freeholders, to entitle persons to vote for members of the House of Representatives, produced an interesting debate. (5 Ell. Deb. 385.) Delaware alone supported it. The nationalists, or some of them, thought that the people could be well represented only by the country squires and "yeomen." Dickinson thought likewise. The plan of the draft Constitution, giving the suffrage to the most numerous body of electors constituted by the several States, was advocated as the more popular by James Wilson, Oliver Ellsworth, George Mason, Pierce Butler, Benjamin Franklin, and John Rutledge,—a mixed aggregation of nationalists and federalists. There was never more than a scattering support for the idea of limiting the franchise for the

lower House; and *any limitation on the franchise established by the States for their Legislatures, who were to select the Senators, seems never to have entered the mind of a single delegate.*

When the framers of the Constitution employed the term "suffrage of the states" they must have known perfectly what they meant, for the reason that they were themselves exercising the suffrage of their States in the Convention itself. The "suffrage of the states" was also perfectly familiar through the fact that it was enjoyed and exercised by the States in the body known as "The United States in Congress assembled," which was the official title of the Congress of the Confederation. Of course the same rule had prevailed in the two Continental Congresses. The term "suffrage," instead of "representation," obviously signified the number of votes to which the State was entitled in these respective bodies, irrespective of the number of delegates whom she might see fit to send to represent her. The number of these delegates was not fixed. To the Convention Maryland sent four, New York sent three, Pennsylvania sent eight, and Delaware sent five, and the other States sent varying numbers. Nevertheless, in the Convention, as in the Congress at that time, and in all previous Congresses, each State enjoyed one vote notwithstanding the size of its representation.

It was then definitely settled, as early as the 7th of June, 1787, upon John Dickinson's motion, that *the suffrage in the Senate should be the votes cast by "members to be chosen by the individual legislatures;"* which was the identical method under which the delegates from the several States to the Convention itself were selected, and also the method employed in selecting the delegates to the Congress of the Confederation, and before that time to the first and second Continental Congresses.

It is apparent that the phrase "suffrage of the States in the Senate," had already acquired a definite meaning. It clearly signified the votes cast by persons *chosen under the authority of the States themselves* and could not have referred to senators selected,—according to the Virginia plan, or the elaborate draft constitution of Charles Pinckney,—by the House of Representatives. (See 1st Elliott Deb., pages 143-145). Nor could it have been applied to senators chosen by senatorial districts, as proposed by Wilson. (1st Elliott Deb., 156.) All these plans had been voted down before any question of the numerical value of the voting power of the States was taken up at all and before the phrase "suffrage of the States" was placed in the Constitution.

As to the provision for the qualification of electors of the House of Representatives, there was only the one controversy above mentioned. The existing provision of the Constitution was contained in the document that purports to be Pinckney's draft (1st Elliott Deb., 145), in which Article 3 commences as follows:

"The members of the House of Delegates shall be chosen every — year by the people of the several states; and the qualifications of the electors shall be the same as those of the electors in the several states for their legislatures * * * and vacancies therein shall be supplied by the executive authority of the state in the representation from which they shall happen."

This was practically the only provision in Pinckney's draft by which the States were to participate at all in the structure of the National Government.

c. Contemporary Criticism of the Plan.

There seems to have been, as was natural, a certain amount of loose thinking among members of the Conven-

tion caused by the use of the word "States" in different senses. By some, especially the States Rights men, it was used in the sense of the state governments. By others it was used in the sense of the people of the states as organized communities. The proposition to refer the Constitution itself for ratification to conventions of the people in the several states was resented by some of the advocates of a confederate form of government, including Luther Martin. He used the same argument in his letter (1st Elliott Deb., page 387) that is noticed by Chief Justice MARSHALL in *McCulloch vs. Maryland* (supra), where he says, 4 Wheat., p. 404:

"It has been said, that the people had already surrendered all their powers to the state sovereignties, and had nothing more to give. But, surely, the question whether they may resume and modify the powers granted to government, does not remain to be settled in this country. Much more might the legitimacy of the general government be doubted, had it been created by the states. The powers delegated to the state sovereignties were to be exercised by themselves, not by a distinct and independent sovereignty, created by themselves."

In this passage Chief Justice MARSHALL plainly uses the phrase "state sovereignties" in the sense of "state governments," and the word "states" in the same sense. It is hardly to be contended, however, that the term "suffrage of the states in the Senate" is to be taken to mean "suffrage of the state governments." As Luther Martin points out, in criticizing the Senate as being, after all, in his opinion, no real safeguard to the "states" against federal encroachment (1st Elliott, p. 360), the senators once elected by the legislatures were not subject to recall, and yet if they were delegates of the state governments, or as was later said "ambassadors from the sovereign states," the right of recall would have been an absolutely necessary condition. Curiously

enough, the Virginia plan for the election of members of the lower house provided that they should be subject to recall (1st Elliott, p. 143, Resolution No. 4).

The true answer to Luther Martin's criticism is, of course this, that the Government was not strictly national or strictly federal in any of its branches. It had a combination of the features of these two forms which pervaded every part. The House of Representatives is not strictly a national house of commons, because every state, no matter how small or insignificant, is to have at least one representative, thus producing an inequality not to be justified on strictly nationalist grounds. (A further practical inequality always exists, due to the fact there can be no common divisor for the State populations.) This inequality is even more marked in the electoral college where the smallest states cannot enjoy less than three votes. Another curious fact is that when there is no election by the electoral college and the election is thrown into the House of Representatives, where the states have very unequal representation, the ancient equality of suffrage among the states suddenly revives and the vote is given by states; but even then it is confined to the three highest candidates voted for by the electors.

Obviously also, the fact that the members of the House are elected within the states by electorates created by the states themselves, and not by any national electorate, which does not exist, proves that the House possesses a character essentially federal, notwithstanding the predominating national consideration in the apportionment of its members.

As to the Senate, the absence of the right of recall must be due primarily to a desire, for national purposes, to keep this body independent of sudden bursts of popular

fancy and passion and to secure the stability of the general government for national ends. It was also feared that the states might at any time abolish the national government by refusing to elect senators and thus render it impotent. This fear is referred to by Chief Justice MARSHALL in *Cohens vs. Virginia* (6 Wheaton 289):

“But should no appeal be made to force, the states can put an end to the government by refusing to act; they have only not to elect senators and it expires without a struggle.”

And at page 390:

“It is true, that if all the states, or a majority of them, refuse to elect senators, the legislative powers of the Union will be suspended. But if any one state shall refuse to elect them, the Senate will not, on that account, be the less capable of performing all its functions.”

See also Federalist No. 59, p. 274.

The provision for the six-year term of senators, with biennial renewals of one-third of the membership, was deemed a practical provision preventing any possible combination of states from conspiring to put an end to the federal government by the refusal to elect senators. It was impossible to reduce the membership below a quorum competent to do business, without a conspiracy so far-reaching, and so extended in point of time, that it would practically amount to a general upheaval against the Constitution itself; and it was recognized, by none more fully than by Chief Justice MARSHALL himself, that whenever such an upheaval took place the government would be at an end (*Cohens vs. Virginia*, supra).

So that the absence of any provision for the recall of senators, criticized by Luther Martin from the purely federalist, or States Rights, point of view, is not a valid

criticism when applied to a constitution that is admittedly national as well as federal in its nature. Luther Martin's objection was to the national nature of the Constitution, which he feared would enable the ambition and selfishness of the great and powerful states like Virginia, Pennsylvania and Massachusetts to encroach upon and obliterate the liberties of their smaller neighbors. Against a nationalism that was based on the national sentiments of the people, co-operating through their states and not upon the lust of domination, Luther Martin never showed any opposition, any more than did Dickinson, or Read, or Johnson of Connecticut, or Paterson of New Jersey. Martin criticizes the compromise by which the larger states were to preponderate in the House of Representatives, while conceding an equality in the Senate, as a mere agreement on the part of a strong man who had both his feet on the neck of his enemy to take one of them off while keeping the other on. (1st Elliott, p. 360.) In this he plainly falls into the error above noted of confusing the state governments with their people, who are the nation, though they act only within their states.

These criticisms, actually made in the Convention itself by the representatives of the minority, or small states, show conclusively that the subject of *what constituted the suffrage of the states*, both in the House of Representatives and in the Senate, was most thoroughly argued, debated and considered. It was only after it had been definitely settled just what the suffrage in the Senate should be; how the senators should be chosen; what was to be their term of office; whether they were to be dependent upon their constituency or independent of it during that term; whether they were to be required to voice the sentiments of their constituents or of the legislatures that chose them, or their own sentiments;—all these ques-

tions had been considered and determined, and the Senate had been created in the shape in which it existed up to the adoption of the 17th Amendment, *before* the proviso was added to Article V to the effect that by no amendment to the Constitution could any state be deprived, without its consent, *of its equal suffrage in the Senate.*

Madison, in addressing the Virginia Convention, said:

“When we come to the Senate, its members are elected by the States in their equal and *political* capacity. But had the government been completely consolidated the Senate would have been chosen by the people in their individual capacity.” (3 Ell. Deb. 94.)

He means, of course, if Wilson’s plan to elect them by districts had been adopted. And below he speaks of three-fourths of “the States” adopting amendments.

Ellsworth, in moving that the rule of suffrage in the second branch be equal as under the confederation, said:

“To the eastward, he was sure that Massachusetts was the only State that would listen to a proposition for excluding the States *as equal political societies* from an equal voice in both branches.” (5 Ell. Deb. 260.)

The expression “*as equal political societies*,” means more than an equal number of senators.

On page 263 he said:

“The power is given to the few to save them from being destroyed by the many.”

On page 270 *Luther Martin* spoke of it as “equal sovereignty.”

After the heated debate, when everything was voted down and everything went awry, the committee appointed to compromise reported:

“That in the Second Branch, *each State shall have an equal vote.*” (1 Ell. Deb. 194, 206.)

The final draft was mere change of phraseology, so this shows (if it were not self-evident) that suffrage means the “vote” of the State.

Iredell said in the North Carolina Convention:

“and *in order that no consolidation should take place* it is provided that no State shall by any amendment or alteration be ever deprived of an equal suffrage in the Senate without its consent.” (4 Ell. Deb. 177.)

As consolidation can come about with two senators remaining, say by national mass vote referendum, *Iredell* must have thought that the guarantee meant more than just “two senators each.”

Charles Cotesworth Pinckney said in the South Carolina Convention:

“the Senate will be elected by the State Legislatures and represent the States in their *political capacity.*” (4 Ell. Deb. 304.)

Charles Pinckney (delegate to the National Convention) said in the South Carolina Convention:

“With us the sovereignty of the Union is in the people.” * * * “I trust that when we proceed to review the system by sections, it will be found to contain all these necessary provisions and restrictions, which while they enable the general government to guard and protect our common rights as a nation to restore to us those blessings of commerce and mutual confidence which have been so long re-

moved and impaired, *will secure to us those rights which, as the citizens of a State, will make us happy and content at home—as the citizens of the Union respectable abroad.*" * * *

Then, after discussing the House as representing the people:

"here too, the States, whose existence as such we have often heard predicated as precarious, will find, in the Senate the guards of their rights as *political associations.*"

That, of course, does not mean the acts of individual senators which he was not discussing, but the structure of the Senate which as part of the whole he *was* discussing.

Continuing:

"On them (I mean the State systems) rests the general fabric; on their foundation is this magnificent structure of freedom erected, each depending upon, supporting and protecting the other," (he means the Federal part and State part), "nor—so intimate is the connection—can the one be removed without prostrating the other in ruin; like the head and the body,—separate them and they die." (4 Ell. Deb. 328, 330.)

d. Meaning of the Proviso as Applied to Plan.

The suffrage of the states in the Congress of the Confederation, and in the Convention, with which they were familiar, had already been changed materially in its nature. Although the legislatures were to elect the senators, the time and manner of their doing so were placed under the control of Congress (Art. I, Sec. 4). Once elected, the senators were to be paid by the United States, and were wholly absolved from state power or control. Their responsibility was political only. How much more

vital did it become that that responsibility be not taken away by any interference with their constituency, the people who elected the legislatures who were to elect them.

Nowhere in the debates of the Convention was it questioned that the suffrage of the states in the Senate must be their vote, cast by representatives selected through the internal power of the states themselves exercised internally, though under rules that Congress might prescribe for its exercise. No body dreamed, of course, that it could mean anything else. Controversy raged for months over the question of whether the vote of the states should be equal or not, but there never was room for controversy that, whether equal or not, it should be the vote of the states respectively, and not of an electorate imposed upon the states by some outside power. The two propositions that eliminated the electorate of the states, as we have seen, were thrown out of court before the controversy as to equality had even commenced.

Curtis, in his History of the Constitution (Vol. II, page 124), summarizes the controversy as follows:

"The minority (Ct., N. Y., N. J., Del. and generally Md.) * * * said that the smaller states * * * could not surrender their liberties to the keeping of a majority of the people inhabiting all the states, for such a power would inevitably destroy the state constitutions. They were willing, they said, to enlarge the powers of the federal government; willing to provide for it the means of compelling obedience to its laws; willing to hazard much for the general welfare. *But they could not consent to place the very existence of their local governments, with all their capacity to protect the distinct interests of the people, and all their peculiar fitness for the administration of local concerns, at the mercy of great communities, whose policy might overshadow and whose power might destroy them.*

"To the claim of political equality as between a citizen of the largest and a citizen of the smallest state in the Union, they opposed the doctrine, that in his own state every citizen is equal with every other, and holds such rights and liberties, *and so much political power as the state may see fit to bestow upon him*; but that, when separate states enter into political relations with each other for their common benefit, *it is among the states themselves that the equality must prevail.*"

And again, on page 139 and 140:

"*It was settled and conceded that the states, as political societies, must be preserved; and if they were to be represented as corporations, or as so many separate aggregates of individuals, they must be received into the representation on an equal footing, or according to their relative weight. An inquiry into their relative wealth must have involved the question, as to five of them at least, whether their slaves were to be counted as part of that wealth. No satisfactory decision of this naked question could have been had.* * * * [It is fortunate that this was so.] * * * Two courses only remained. The basis of representation in the Senate must either be found in the number of people inhabiting the states, creating an unequal representation, *or the people of each state, regarded as one, and as equal with the people of every other state, must be represented by the same number of voices and votes.* The former was the plan insisted on by the friends and advocates of the 'national' system; the *latter was the great object* on which the minority now rallied all their strength."

Again, in reviewing the actual results of the great compromise, the same author says, on page 166:

"That the final concession of this point (equality of suffrage in the Senate) was a wise and fortunate determination there can be no doubt. * * * They looked at it, in the first instance, as the means of

securing the acceptance of the Constitution by all the states and thus of preventing the evils of a partial confederacy. They probably did not at once anticipate the benefits to be derived from giving to a majority of the states a check upon the legislative power of a majority of the whole people of the United States. Complicated as this check is, *it both recognizes and preserves the residuary sovereignty of the states*; it enables them to hold the general government within its constitutional sphere of action; *and it is in fact the only expedient that could have been successfully adopted, to preserve the state governments, and to avoid the otherwise inevitable alternative of conferring on the general government plenary legislative power upon all subjects.*"

In reviewing the subject of the suffrage of the states in the Senate, the authors of the "Federalist" speak with scarcely disguised spleen, which is not to be wondered at, as both Madison and Hamilton were among the most intense opponents of the equality guaranteed to the states. Nevertheless, Madison says, that the proviso in Article V is: "*A palladium to the residuary sovereignty of the states, implied and secured by that principle of representation in one branch of the legislature.*"

"Federalist," No. 43, p. 204.

The significance of this is not to be overlooked, when it is remembered that the "Federalist" is the collection of the ablest and most convincing arguments given to the people of the United States in favor of the ratification of the Constitution in the days when its fate hung in the balance. With that guarantee of equality in the Senate,—"*the palladium,*" as they unquestionably viewed it, of their existence, and their immunity from the political and economic annihilation that they dreaded,—the small states accepted the Constitution. Those states who had led the battle for this equality, threatening in no un-

certain terms to secede from the Convention and make a constitution impossible, if it was not granted, unanimously and without delay ratified the Constitution with this unchangeable principle of equality in the Senate.

Is it believable, in the light of all this history, that the proviso in the Fifth Article means no more than a bare numerical equality of representatives hailing from the different states, no matter how they may be chosen, or no matter what powers they may be permitted to exercise?

The Senate in which this equality was granted was one of the branches of the national legislature in which by Article I "all legislative powers herein granted shall be vested." It was that branch the concurrence of two-thirds of which was necessary for the ratification of treaties. It was that branch which alone had the power to try impeachments. It was that branch whose advice and consent were necessary to the ratification of all presidential appointments, not otherwise provided for by law. It was granted, together with the House of Representatives, the power by a two-thirds vote to override the presidential veto. It was granted by a similar vote, in concurrence with the House of Representatives, the power to propose amendments to the Constitution of the United States. These are the specific powers which it was understood the Senate should possess at the time that the small states insisted upon an equality of suffrage in that body. Would they have insisted so strenuously for equality of suffrage in a body that was not thus an essential part of the national legislature?

This Court has said, through Mr. Justice BREWER:

"If powers granted are to be taken as broadly granted and as carrying with them authority to pass those acts which may be reasonably necessary to carry them into full execution; in other words, if

the Constitution in its grant of powers is to be so construed that Congress shall be able to carry into full effect the powers granted, *it is equally imperative that where prohibition or limitation is placed upon the power of Congress that prohibition or limitation should be enforced in its spirit and to its entirety.* It would be a strange rule of construction that language granting powers is to be liberally construed and that language of restriction is to be narrowly and technically construed. Especially is this true when in respect to grants of powers there is * * * the help found in the last clause of the eighth section, and no such helping clause in respect to prohibitions and limitations. The true spirit of constitutional interpretation in both directions is to give full, liberal construction to the language, aiming ever to show fidelity to the spirit and purpose."

Kansas vs. Colorado, 206 U. S. 46, 91.

e. Examples of Proposed Violations of Proviso.

We frequently hear the proposition of a constitutional amendment providing for a national referendum on acts of Congress. Nothing of the kind, of course, was dreamed of by the framers of the Constitution, but if it had been, what would have been the attitude of the small states toward it? It is only necessary to read the debates in the Convention or Luther Martin's letter to give answer.

If the vote of mere electors, or as we generally say "voters," in New York and Pennsylvania could override the vote of United States senators from Delaware and Maryland, upon the passage of any bill, what would equality of suffrage in the Senate amount to? It is as clear as day that a national referendum by which state lines would be broken down and the people as a whole "thrown into hotchpot" and called upon to vote for or against acts of Congress, which would be passed if they approved, and defeated if they disapproved, would be in

utter violation of the Fifth Article, and would annihilate the equality of suffrage in the Senate, which is the fundamental condition of the existence of the Constitution of the United States.

It is also inconceivable that any amendment to the Constitution conferring the selection of senators,—as was proposed in the Virginia plan and in the Pinckney draft (if the same be genuine),—upon some power such as the House of Representatives,—or, say, the President of the United States,—external to the states themselves, would not equally violate the guaranty to the States of their equal suffrage in the Senate. If the President or the House were to select the senators, even though required, as in the alleged Pinckney plan, to select residents of the states from which they were named, yet they could not by any stretch of language be deemed to be the senators of those states or to exercise what the Convention understood by the phrase, “the suffrage of the states.” The very meaning of the word “suffrage” or the word “vote” signifies the expression of the will of the person or body whose suffrage or whose vote is referred to. The will of the state or of the people of the state can be expressed, and their vote can only be cast, by a representative whom *they* have chosen,—not by a representative whom somebody else outside of that community has chosen, and whom they have no power either to select or instruct.

We, therefore, say confidently, and we challenge our opponents to deny it, *that the suffrage of the state in the Senate means the vote or votes cast in the Senate by senators chosen by the state to represent it.* Whatever latitude there may be as to the *method* which may be prescribed for the election or choice of such senators by the state, yet that election and that choice must be the free act, at whatever time and in whatever manner it takes

place, of the existing body or community that is designated by the word "state."

f. The State Must Be Capable of Consenting.

There is another feature of the proviso of the Fifth Article which is essential to its interpretation and that is the word "consent." "*No state, without its consent, shall be deprived,*" and so forth.. This necessarily supposes that the state, by some means, is capable as a body of consenting, or dissenting, to such proposition as may be placed before it. In order to express consent or dissent on the part of the state, it is necessary, either that the people shall vote directly upon the proposition, through a plebiscite or referendum, or that they shall vote indirectly through their representatives, whether in state legislatures or in conventions. In any case the vote of the people through the qualified electors, under the election laws *existing or adopted by* the state, is indispensable to the expression of the state's consent or dissent. Again we challenge our opponents to deny this proposition.

It is, therefore, plain that the suffrage in the Senate that is guaranteed to the states is guaranteed to them as communities capable, through popular election, of voicing their consent or of refusing their consent. However much a state government's powers of residuary sovereignty may, by amendment to the Constitution, be curtailed, yet it is absolutely clear that the state can not be deprived of the means of *expressing* its own will, whether that will be allowed to prevail or not. The question raised by any amendment interfering with the suffrage is not a question of state supremacy. It is not a question of the extent of a state's power. *It is simply a question whether a state's voice may be choked or stifled by rendering it impossible to express its sentiments at all.*

An individual may be precluded by tyrannical power from expressing his views and beliefs; he may defy such power and suffer the consequences; but if an American state is not allowed to open its polls in an election to such of its own people as constitute its electorate, there is no means on earth for that state to express its corporate views or desires.

“In order to form a more perfect union and secure the blessings of liberty” the people of the United States had no idea of suppressing the voice of the several communities of which the Union was composed. Even the ultra-nationalist plans of Madison and Pinckney did not propose anything of this kind. They left the states unequal, it is true, in voting strength, but yet free by representatives freely elected by their own qualified electors, to utter their sentiments and vote as the people of those states would desire, in the House of Representatives of the Union.

g. Election of Senators Committed to States.

When the election of senators was definitely committed to the states, through such legislatures as they might establish and select, and through such voters as they might qualify, and the suffrage of the states in the Senate was guaranteed until they severally should consent to surrender it, the principle was anchored into the Constitution for all time, that the *votes and voices of the states, as self-constituted and free constituencies*, could never be taken away or suppressed, by any amendment to the Constitution not unanimously ratified.

Obviously, the 17th Amendment, merely simplifying the procedure in the selection of senators by the people of the several states, and eliminating the *indirect* feature of this procedure, neither deprived the states of their

suffrage nor of their power of consenting or dissenting to future amendments that might have that effect.

Possibly the relation of a state's internal suffrage to its suffrage in the Senate was not so plainly manifest before the adoption of the 17th Amendment, which throws that relation into bold relief. In no other way does it affect the case.

3. **THE NINETEENTH AMENDMENT VIOLATES THE PROVISIO,
AND SO EXCEEDS THE EXPRESS LIMITS OF
THE AMENDING POWER.**

I. Effect of the Amendment.

The Amendment reads as follows:

“The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of sex.

“Congress shall have power to enforce this article by appropriate legislation.”

The language is copied *verbatim* from the 15th Amendment, down to the essential word “sex,” which takes the place of the phrase, “race, color or previous condition of servitude” in the earlier measure. In the case of the 15th Amendment it has been held that one of the effects of this language was to strike out the word “white” wherever it appeared in a State Constitution as one of the qualifications for suffrage.

Myers vs. Anderson, 238 U. S. 368.

It is contended with reason by our opponents that this Amendment must be so construed as to strike out the word “male” wherever it occurs in such qualifications.

But it has also been repeatedly held that the 15th Amendment does not confer the suffrage on anybody.

The States alone do that. The Amendment merely prescribes that in conferring it they must not discriminate "on account of" race, colour, etc. *Guinn vs. U. S.*, 238 U. S. 347. They may impose educational or other qualifications that only an insignificant minority of their coloured citizens could meet. Many of them do this at present. The suffrage is not conferred upon such persons.

The 19th Amendment, however, forbids discrimination "*on account of sex.*" Wherever living beings exist in a state of society there are two sexes. No qualifications for suffrage could be devised that under this Amendment would not admit women and men on a footing of substantial equality.

When a distinction so universally pervasive and so regardless of age, race, colour, creed, nationality, education, intelligence, wealth or poverty, inheritance, social station, or any conceivable differentiation among classes is abolished the inevitable effect of abolishing the distinction is *to confer* the vote, as by an affirmative act, on the sex heretofore deprived of it.

We submit that this Court could not say of the 19th Amendment, as they said of the 15th, "It does not confer the suffrage on women."

If in the year 1870 the suffrage in certain states had been limited, as it was in 1789, to *free holders*, the operation of the 15th Amendment in those states would have been negligible. Probably not half of one per cent. of the former slave population would have been qualified.

The universality of application of the word "sex" as contrasted with the almost single case of the negro race with which the 15th Amendment was intended to deal,

makes the effect of the one so different from the other, that if this Court were to say, "*The 19th Amendment does not confer the suffrage on women*," the average man, be he lawyer or layman, would gasp at the statement. Such a holding by this Court would be a refinement of subtlety that could scarcely be reconciled with sincerity.

We must, therefore, assume that the 19th Amendment does, not incidentally, or "measurably," as the late Chief Justice WHITE said in the *Guinn* case (238 U. S. at 363), but *inevitably*, confer on women, who did not previously possess the right of suffrage, that right and burden. In every male suffrage state,—whatever the existing qualifications, such as educational, or "understanding," tests, ancestry, property or the payment of taxes, in addition to residence, sanity, age and non-conviction of crime,—the body of voters, or of those entitled to register and vote, is substantially doubled.

The right of suffrage previously possessed only by qualified male citizens has been *diluted to half strength*.

No enforcing legislation by Congress is required to accomplish this. The amendment does it of its own force. It re-makes—re-constitutes—every State in the Union, that has not already by voluntary internal act re-made itself, *into a state governed equally by male and female votes*. It abolishes a distinction in political power that has been since the world began.

II. Operation of an Amendment Restricting Suffrage.

If, instead of extending the right of voting to persons who never possessed it before, the Amendment actually forbade its exercise by those who did possess it under the laws of their States, we submit that the invalidity of such a measure would be so patent that no argument could be framed to sustain it.

Suppose an amendment providing that *only* Roman Catholics, or *only* Protestants, or *only* persons with estates worth \$10,000, or *only* wage-earners, should vote.

If every member of this Court would not at once concede that such a measure would deprive the State of its suffrage in the Senate, and of its power to consent or dissent to amendments, and vest both the suffrage and the power in a *fraction* of the State, when the Constitution guarantees it to the *entire* State, then we would confess our inability to place a meaning on plain words.

An amendment depriving a part of "the people of the State who compose the State" (*Lane Co. vs. Oregon*, 7 Wall. 71; *Texas vs. White*, *ibid.* 700) of their right to elect Senators, would be repugnant to Article V, or else language fails.

We say no more on this head, for "much insistence robs truth of her dignity."

III. Operation of an Amendment Enlarging or Conferring Suffrage.

We submit that as to such measures, including the 19th Amendment, the effect is the same. The source of power in the State is changed without the action and regardless of the will of the people of the State. As Daniel Webster argued in *Luther vs. Borden*, 7 How. 1, 30:

"the qualification which entitles a man to vote must be prescribed by previous laws."

A break in the continuity of title to political power in any State occurs only through revolution, or invasion by some foreign or external power. These methods, as Webster points out, are alien to constitutional government and are "wide of the American track."

If political power could be conferred by amendment of the Federal Constitution it would *only* be because the people of the several States in ratifying that instrument had delegated the power to confer it on others without the consent of the existing political powers in each State. But they have not done so. On the contrary they have said that to take away or to change the vote of the then existing States in the Senate the consent of those States is indispensable. That consent can be expressly granted *only* through the action of the existing political powers, i. e., the qualified voters of the State. Those voters remain the sole legitimate source of power till by their legal action under the forms of their own Constitution, or at least by such internal action as their own constituted authorities and especially their Courts recognize as having such effect, their powers have been extended to others.

In other words, a State can amend its own Constitution and so extend the suffrage to women. In such case their title to political power in valid, and the new State is but a continuation of the old.

But if a mob within, or a powerful government without, a State, undertakes to amend the State Constitution to the same effect, the title of the new voters to the power so conferred is not derived from their State, but from an overriding force. The "suffrage of the State in the Senate" henceforward is the suffrage (in part at least) of persons not authorized by the State as previously constituted and existing to vote at all, and the "vote and voice" of the State have been merged in a new "sovereignty," that is not legitimate nor in any true sense sovereign at all.

**IV. The Settled Law of Corporations Forbids Enlarging the Suffrage,
Against the Corporate Will.**

We need not rest on *a priori* reasoning as in the preceding paragraph, because the law on the subject has long been settled by this Court and others.

Whatever a State is, whether sovereign or not, incontestably it is a corporation.

Ordinary corporations, whether public or private, are the creatures of legislative power, and in the absence of constitutional protection might be changed, re-made, re-constructed or abolished by the power that created them.

In general, public corporations are subject to almost any change the legislature may see fit to impose upon them. No federal question is ordinarily involved in amending or in repealing a municipal charter. The power of electing city officials may be entirely taken from the citizens, or from some of the citizens. Unless the State Constitution forbids, such legislation is valid.

The same would hold true of private corporations of all kinds, except only for these restraints:

- a. The Contract Clause of the United States Constitution;
- b. The "due process" or "law of the land" or "special law" provisions of State Constitutions;
- c. The 14th Amendment.

In the case of *Dartmouth College vs. Woodward*, 4 Wheat. 518, 652, it was held by this Court that a charter granted by the British Crown to a private institution by which it was incorporated and its management vested in

a self-perpetuating board of twelve trustees, each member of which had an equal vote, was a *contract*, though an executed one, and as such it would be impaired by legislation that did not directly deprive those trustees of their votes, but that *enlarged the board*, and *conferred upon others* not chosen by the board itself, and without the board's consent, an equal vote and voice in the corporate management.

The prohibition thus violated was against "impairing the obligation of the contract" which created the self-perpetuating and self-governing body.

The prohibition is precisely the same in effect as the prohibition relied on in this case.

Granting, for the sake of argument, that in the absence of the proviso in Article V, the amending power is broad enough entirely to reconstruct or even abolish a State, just as an unrestrained legislative power could reconstruct or abolish any corporation, yet we find the amending power expressly restrained from depriving any State, without its consent, of its equal suffrage in the Senate.

"Its consent" means the consent of the State, i. e., of a corporation, which can, as all corporations, act only by its agents. Those agents are primarily the *voters* (stockholders, members, contributors, trustees, or whosoever by the charter or by-laws adopted in pursuance of the charter, have the right to vote) and secondarily, the directors or managers who are chosen by the voters to carry out their will, unless as in the case of such an institution as Dartmouth the *voters* and *directors* are the same.

If the consent of a private corporation is indispensable to an act that would force its voting *members* to share

their power with others, because otherwise the chartered existence of the corporation may be indirectly abolished, how much more is the consent of a State whose suffrage in the Senate may not be taken from her without her consent necessary to a precisely similar measure?

And the same rule has been laid down in regard to the deprivation of property otherwise than by the *law of the land*. The voting power of members of a corporation, even if that power is not coupled with any beneficial interest in the voter, but is a trust for eleemosynary purposes, may not be vested by legislative fiat in others than those who derive their power under the original act of incorporation, without violating not only the contract clause, but the 29th Chapter of Magna Charta, that forbids deprivation of property save by "lawful judgment of one's peers or the law of the land."

Brown vs. Hummel, 6 Pa. St. 86.

In a recent criticism of the *Dartmouth College Case* by Prof. A. W. Scott, 34 Harvard Law Review, p. 7, it is pointed out that the State Court was clearly in error in not having held the attempted amendment of the college charter void as conflicting with the provision in the Bill of Rights of New Hampshire forbidding the deprivation of property unless by the "law of the land," and that since the adoption of the 14th Amendment it would have been wholly unnecessary to resort to the "contract" clause to raise a federal question as the "due process" clause of that amendment was clearly violated. He cites many authorities in support of this view, among which we mention *Sage vs. Dillard*, 15 B. Mon. (Ky.) 340, 361; *Allen vs. McKean*, 1 Sumn. 276, 305, cited in *Bryan vs. Board of Education*, 151 U. S. 639; also *Ohio vs. Neff*, 52 Ohio St. 375, 40 N. E. 720 (1895), and *Regents vs. Williams*, 9 Gill & Johns. (Md.) 365.

In the Kentucky case, and in the case in *Sumner*, decided by Mr. Justice Story, the power to amend was expressly reserved, yet it was held that this *did not include the power to add to the number of voting members or trustees*, and so change the control of the corporation *without the corporate assent*. Both cases were cited with approval by this Court.

In the Ohio case the management of a college was conferred upon the governing board of the University of Cincinnati, another institution, and this, although the Legislature had expressly reserved a power of "amending" the charter of the college, was held to be void as a violation of the right of private property belonging to the college and secured by the State Constitution.

In the Maryland case it was held that a change by Act of the Legislature of the controlling power of a corporation without its assent, was not only an impairment of the contract found in the charter of the institution, but also as being a legislative dissolution or ouster, void as being an attempt by the Legislature to exercise a judicial power, and as an attempted deprivation of property otherwise than by the "law of the land," and also as "opposed to the fundamental principles of right and justice, inherent in the nature and spirit of the social compact."

The last reason has been criticised and surely the others suffice without it. At all events the law is clear, that the *existing rights of a corporation are impaired* by changing the voting or controlling power that governs it and giving that power in whole or in part to others to exercise.

That is sufficient for the decision of this case.

The right of the State as a mere corporation, to be represented equally with other States in the Senate by two Senators, each of whom shall have one vote, is a right that cannot be impaired without the State's consent. Ergo the voting or controlling power within the State under its own laws (which correspond to the corporate charter and by-laws) cannot be conferred upon other natural persons than those which its own laws authorize, because the effect would be to deprive the State as a body corporate of a right of which there is no power to deprive it without its own corporate consent.

V. Summary.

The Nineteenth Amendment does in fact and necessarily confer the right of voting within the State upon persons on whom the State has not conferred it, and it does in fact and necessarily dilute and diminish the right of voting of those upon whom the State has conferred it, and so it changes by the force of external power the control of the State's corporate affairs, including the corporate suffrage belonging to the State in the Senate.

It deprives the State as hitherto constituted and existing of the right to elect any Senators at all.

It deprives the State as hitherto constituted and existing of the power to consent to any amendments of the Constitution whatever.

If either that right of suffrage or that power of consent had been subject to abolition by the Constitution, would Delaware, Connecticut, New Jersey or New York or Maryland have ratified the instrument?

The writers of the "Federalist" (No. 43, p. 204), who proclaimed to the people that the proviso was "*probably intended as a palladium to the residuary sovereignty of*

the States, implied and secured by that principle of representation in one branch of the Legislature (i. e., equality of suffrage in the Senate), and was probably insisted on by the States particularly attached to that equality," were, if our opponents are right, guilty either of deliberately misrepresenting the meaning or of wholly misunderstanding the purpose of the clause. Both of them were present, and MADISON, the author of this passage, took active part in the debate upon the adoption of the proviso. He tells us it was "dictated by the circulating murmurs of the smaller States," and that it was agreed to unanimously for that reason (5th Ell. Deb. 551-554). The word "probably" in the quotation is a transparent cloak to conceal the identity of the then anonymous writer, all the proceedings of the convention being veiled in supposed secrecy until over 30 years later.

Maryland by her votes in the convention showed that she was one of the "States particularly attached to that equality."

The late Chief Justice WHITE, speaking for this Court, in *Guinn vs. United States*, 238 U. S. 347, says:

"Without the possession of which power" (i. e., the power over suffrage which has belonged to those governments—the State governments—from the beginning) "*the whole fabric upon which the division of State and national authority under the Constitution and the organization of both governments rest would be without support, and both the authority of the nation and the State would fall to the ground.*"

If this Court has held that the power over suffrage is necessary to "support" the organization and the authority of the State as well as the nation, how can it be that the one right which is by express prohibition made inalienable without the State's consent would not be im-

paired by abolishing or impairing that power without which the State can have neither organization nor authority?

The most manifest of the errors committed by the Court below consisted, we submit, in the refusal of the following prayers:

PETITIONERS' SECOND PRAYER.

The Court rules as matter of law that the alleged Nineteenth Amendment of the Constitution of the United States is in conflict with the proviso contained in Article V of the Constitution of the United States.

PETITIONERS' THIRD PRAYER.

The Court rules as matter of law that a State's suffrage in the Senate means the votes cast in the Senate by Senators elected in the State by the people thereof, through Electors, who possess the qualifications of Electors of the most numerous branch of the State's Legislature, which qualifications are prescribed and determined by the State in its Constitution or laws, and any purported amendment to the Federal Constitution which nullifies, substitutes or alters the qualifications of such Electors so prescribed and determined by the State, so as to confer the power of electing Senators upon persons on whom the State has not conferred it, or to deny, diminish or dilute such power in the persons upon whom the State has conferred it, operates to deprive the State of its suffrage in the Senate, and that the alleged Nineteenth Amendment would so operate.

PETITIONERS' FOURTH PRAYER.

The Court rules as a matter of law that the consent of a State to such changes in the Federal Constitution as by the provisions of Article V require such consent, can only be expressed, whether directly or indirectly, through the voice of the majority of those persons upon whom it has conferred through its Con-

stitution and laws the power to vote, and that any measure which confers such power upon other and different persons, or denies, diminishes or dilutes such power in those upon whom the State has conferred it, deprives the State of its power by any means to consent to such changes or amendments, and is inconsistent with the proviso contained in Article V of the Constitution of the United States; and that the alleged Nineteenth Amendment is such a measure."

**4. THE FIFTEENTH AMENDMENT AND DECISIONS THERE-
UNDER DO NOT GOVERN THIS CASE.**

The Maryland Court of Appeals held (pp. 152-156) that the 19th Amendment was impossible to distinguish in principle from the 15th, and that this Court had rendered a number of decisions based on the assumption that the 15th Amendment was valid, though without ever deciding that question directly, and hence the Maryland Court held it was constrained to find that the 19th Amendment was within the amending power. No opinion was expressed either upon the general limits of that power or upon the meaning and effect of the proviso or express limitation thereof.

a. Consent Has Validated 15th Amendment.

The proviso in Article V reads as follows:

"Provided that no State without its consent shall be deprived of its equal suffrage in the Senate."

This has been construed by this Court as "a permanent and unalterable exception to the power of amendment" (*Dodge vs. Woolsey*, 18 How. 331, 348), and as "excluding any amendment which will deprive any State, without its consent, of its equal suffrage in the Senate" (*Dillon vs. Gloss*, dec. May 16, 1921, 41 S. C. Rep. 510, 512). We have been able to find no other passages where this Court has construed it.

Obviously it follows that if a State consent to be deprived by Constitutional amendment of its equal suffrage in the Senate, such an amendment would not of necessity be invalid in that State. Such amendments may, therefore, acquire validity by consent, which they would not have without it.

If, therefore, the 15th Amendment was consented to by all the States, notwithstanding it might have deprived some of them of their suffrage in the Senate, it would not be obnoxious to the proviso on that ground. Nor would it constitute any precedent whatever for sustaining another amendment however similar in language that had not been consented to by certain states.

The Court of Appeals of Maryland totally ignored this ground of distinction.

Again, it may be said that the objection to an amendment as operating so as to deprive a State without its consent of its suffrage in the Senate should be raised by or on behalf of the non-consenting State or its citizens directly and not in any mere collateral proceeding, and that until the question is so presented the prohibition of discrimination between various classes of citizens in regard to the right of suffrage cannot be held judicially to deprive the State itself of its suffrage in the Senate.

No case ever came before this Court in which the validity of the 15th Amendment was challenged until 45 years after its adoption had been proclaimed and accepted by all the States. Then in the case of *Myers vs. Anderson* (238 U. S. 368) its construction was questioned, it being urged that it could not apply to purely municipal or even State elections, because if so applied it would be void. This case could not possibly, however, have directly involved the election of United States

Senators, arising as it did solely upon certain provisions of the charter of the City of Annapolis.

All other cases in this Court involving the 15th Amendment have been criminal or penal proceedings in which either the collateral effect of the amendment on State laws using the term "qualified voter" was to be construed (as *Neal vs. Delaware*, 103 U. S. 370), or in which State officials were indicted or sued for violation of an Act of Congress (R. S. 5508, etc) in refusing to receive or count the votes of certain coloured citizens (as *U. S. vs. Reese*, 92 U. S. 214; *Guinn vs. U. S.*, 238 U. S. 347; *U. S. vs. Mosley*, ib. 383).

The Maryland Court was in error in ignoring the objections raised to the 19th Amendment on the score that the State of Maryland had refused to consent thereto, because this Court has never ruled, in effect or otherwise, either that consent to such an amendment is not essential to its validity or that consent was not presumptively granted to the 15th Amendment, in any case where its validity could be questioned for lack thereof.

The Maryland Court misunderstood the clear distinction between amendments such as an amendment which might have attempted to empower Congress to forbid the slave trade prior to 1808, or the 16th Amendment if adopted prior to that year, either of which would have been void *ab initio*, because forbidden absolutely, and amendments affecting a State's suffrage in the Senate which are *only void in the absence of consent*, and whose invalidity may at any time be cured by such consent.

At this date, or at the date (1914) at which *Guinn vs. U. S.* and *Myers vs. Anderson*, supra, were decided, there remains or remained no shadow of doubt that every state in the union had long accepted and acquiesced in the 15th

Amendment as one of the fundamental measures of reconstruction of the Union and the States growing out of the Civil War. In regard to any other matter whatsoever requiring consent in law, so long a period of uniform acquiescence gives rise to an irrebuttable presumption that consent has been obtained.

This is altogether different from any latitudinarian doctrine that the Constitution can be amended by acquiescence in its violation, or that a sort of statute of limitations runs in favor of unconstitutional laws or amendments. Our opponents have hitherto failed to grasp, as they have failed to answer, our contention in this regard.

No citizen of any State has brought any action, or been made defendant in any action, that ever reached this Court, in which he claimed that the 15th Amendment was void because his State had not consented thereto.

The question has, therefore, never been before this Court in regard to the 15th Amendment at all. If it should ever be raised the answer is plain that the universal acceptance of any *fait accompli* by the States and their people must give rise to the presumption that they have given to that legal fact their validating consent.

It should never be forgotten that the Southern States which were in rebellion were first compelled to establish irrepealable negro suffrage in their State Constitutions and then to "consent" to and "ratify" the Fifteenth Amendment. They did, in fact, thus formally "consent" to it, as part of the terms of Peace and Reconstruction, stipulated by Congressional Act, as the condition to, and price of, resuming their representation in Senate and House. While the few remaining States in the North

which had rejected it acquiesced therein and permitted their negro citizens to vote thereunder without contest for more than 40 years. The interference with their "suffrage in the Senate" thereby, was "consented" to, in one way or another, by every one of the States of the Union.

This does not violate, but conforms to the terms of the "perpetual guarantee." The proviso itself expressly permits any State to "consent" to an amendment interfering with its suffrage in the Senate.

Acquiescence will not ordinarily make good a violation of the Constitution or prescription make an unconstitutional law valid.

But that is not what we are dealing with here. Here "consent" expressly prevents it from being a violation and expressly makes it legal within the State so consenting.

Such "consent" can reasonably be *implied* from formal submission to the command of an amendment and implicit obelience to its terms for nearly two generations.

After permitting the negro to vote in Maryland for 40 and odd elections neither Maryland nor any of her citizens could be heard to say that Maryland had not "consented" to the Fifteenth Amendment.

In *Myers vs. Anderson*, 238 U. S. 368, the Supreme Court rightly ignored that claim (if indeed it was directly made) and assumed the amendment valid, referring to the fact that the Court of Appeals of Maryland itself had come to recognize its validity in Maryland.

The "consent" of particular states necessarily and rightly implied from long continued acquiescence in an

amendment affecting their "suffrage in the Senate" is totally different from making an illegal amendment legal by prescription, or from applying a rule of limitations to a Constitutional violation.

**b. The Conditions Under Which Reconstruction Was Accomplished
After the Civil War Removed the Question of Consent
From the Realm of Judicial Decision.**

This argument has also been misunderstood by the Maryland Court which saw in it only an attempt to show that measures enacted in a time of violence and excitement must not be deemed to establish precedents to be followed in times of peace and quiet. The question is far more fundamental.

However duress may be held to avoid individual contracts it is emphatically true that it is no defence against the enforcement of the obligations of sovereign States. The Treaty of Versailles is in the eyes of international law fully as binding upon Germany as any ordinary treaty of commerce and amity entered into by her in times of peace.

While there could be no treaty of peace between the Union and the Confederate States or any of them, the substance of a treaty was enacted in three articles of Amendment of the Constitution, settling for all time the questions which caused or which grew out of the Civil War.

Slaughter House Cases, 16 Wall. 36, 67, 77.

See also "The Government of the United States," by Prof. W. B. Munro (Harv.), p. 68, and "Marse Henry" by Henry Waterson, Vol. I., p. 183.

The consent of the seceding States was exacted by Congress to these amendments as a condition precedent

to their readmission to full membership in the Union. Until this consent was granted by the States and acknowledged by the Congress, they were deprived of any representation in the Senate or the House either, and for most of the time were kept under military rule. Their suffrage in the Senate was entirely taken away, and by military rule their power to consent was reduced to a mere formal act in obedience to compelling force. As to them it was unquestionably true that "*inter arma silent leges.*"

The "consent" yielded by the seceding States to the so-called War Amendments was as conclusive upon this Court, however, as the inevitable result of a great war, as if it had been spontaneously granted by free legislatures in times of peace.

The apparent logical difficulty of applying the same reasoning to the border States of Delaware, Maryland, Kentucky and Tennessee and the distant States of California and Oregon, all of which rejected the Fifteenth Amendment, only exists to those who blind their eyes to the cardinal facts of the situation. There is no shadow of doubt that the same power which ruled with an iron rod eleven States during the decade following Appomattox would never have hesitated to apply the same coercive power to little Delaware, or to the other border States, one of which had actually passed an ordinance of secession, and the other two of which had been openly sympathetic with the Confederate cause. Nor would the distance, or the peculiar racial problems of the new commonwealths on the Pacific have protected them, had they done more than merely refuse to ratify the amendment, from the strength of the victorious government, backed by a majority whose watchword was "*thorough.*"

Vis major does not always need the roar of guns to establish its will. It was not necessary to try the patience of the victors by open defiance in order to prove at the cost of bloodshed that the acquiescence of many States in negro suffrage was extorted only by fear.

c. Example in Creation of West Virginia.

To take a quite parallel case. The Constitution forbids Congress to erect a new State out of part of any existing State without the consent of the Legislature of the latter. Yet the State of West Virginia was erected without any consent whatever of the real Legislature of Virginia, the only one that the people of Virginia had chosen. The body called into being by a purely voluntary convention of Union sympathizers at Wheeling and which met at Alexandria under the protection of the Federal Army, while the assembly chosen regularly under the provisions of Virginia's Constitution was sitting at Richmond, the State capital, in the free exercise of its functions, was not recognized by the Congress itself as the Legislature of the State, after the surrender of the Confederate forces, nor were the Senators which it then elected permitted to take their seats. Yet it had been held competent by Congress to sanction the dismemberment of the commonwealth and to cede to a new State one-third the territory of the old.

The analogy would be apparent should anyone now deny in this Court West Virginia's statehood on the ground that the Constitution was clearly violated by the Act of Congress in admitting her to the Union.

Though Congress has the power to determine which of two contesting claimants is the genuine State government (*Luther vs. Borden*, 7 How. 1), can we picture Congress in times of peace recognizing such a body as

the Alexandria assembly as the real legislature of Virginia?

For a graphic description of the event we refer to Blaine's "Twenty Years of Congress," Vol. I, pp. 457, 460, 464.

Thaddeus Stevens said he did not desire to be understood as "sharing the delusion that we are admitting West Virginia in pursuance of any provision of the Constitution." He based the act on the "laws of war" alone.

This is perhaps the most striking instance of the futility of requiring formal consent in order to validate acts accomplished during a war and bearing on the conduct of the struggle or seeking to settle the issues which it decides.

d. Violence No Substitute Method of Amending Constitution, But Its Effects Are Not Subject to Judicial Inquiry.

Violence is not a third substitute for the two methods provided in the Constitution for its own amendment—far from it. But when the question of the consent of States to an amendment, which with such consent is unquestionably valid, is raised, and the fact appears that such States and all their people after refusal to ratify simply acquiesced in the amendment as adopted without their votes, and made their whole policy as to elections and general legislation conform to the amendment without any further protest whatever, due to the fact that such protest would be unheeded or for any other cause, then it is too late to question *in foro legis* the fact of their consent. The absence of protest or resistance on their part is amply explained by the fear that governed their conduct. It is this failure to protest under such circumstances, which we contend should not be used as

a precedent to prove that protests against more or less similar measures in other times and under other conditions, must be held judicially unavailing.

e. Essential Difference Between Race and Sex Discrimination.

i. *Race Problems National in Scope.*

In addition to the distinctions between the cases arising under the 15th and 19th Amendments, due to the question of the non-consent of the State being directly raised in the latter and never being raised or having been entirely precluded by circumstances or the logic of events in the case of the former amendment, we submit there is an essential distinction between the two measures themselves that renders the difference in their operation one of kind and not merely of degree, so that one cannot justly be deemed a precedent for the other.

This distinction consists in the fact that discrimination on account of race, color or previous condition of servitude is unquestionably class discrimination, and the very kind of class discrimination which had in the opinion of many produced the Civil War. Furthermore it is, juridically if not ethnologically, a purely arbitrary discrimination, related to the problem of self-government only in that it excludes from participation therein as a class of human beings, large numbers of the citizens or inhabitants whose right to a voice in their government is considered by many to be quite as clear in a free republic as that of the members of the dominant race.

Race problems had always been matters of national concern. The problem of the Indians was dealt with in the original Constitution by turning it over entirely to the Federal Government, notwithstanding many of the tribes dwelt wholly within the confines of certain States. The phrase "wards of the nation" early applied to the

Indians was readily transferred to the freedmen after the Civil War, as their condition was distinctly analogous. It was the Union that had conferred upon them their freedom and civil rights, and it was for the Union to protect them in their enjoyment. The method selected differed widely from that used in solving the Indian problem. With the wisdom of neither method are we concerned. The principle justifying interference by national power is the root of the matter.

It is very generally true that racial problems cannot be confined in their effects even to national boundaries, much less to the boundaries between States so closely related as the members of the Union. Many racial discriminations, such as those affecting the Jews, greatly concerned the makers of the Treaty of Versailles, and some of them were prohibited to the smaller nations that then were brought into being. Their political autonomy and independence were not deemed to have been materially impaired by such prohibitions.

Between such prohibitions and those contained in the Fifteenth Amendment there is a difference only in degree. For the sake of the peace of the Union, and for the welfare of the subject race which the power of the Union had enfranchised, the States were forbidden to discriminate against them in regard to suffrage.

The negro race had already been made citizens by the Fourteenth Amendment, and whatever may be said of that measure it is not claimed that of itself it affected the senatorial suffrage or right of consent of any State. It forbade discrimination in regard to civil rights between any persons, meaning especially between white persons and negroes, but not mentioning the latter except as included in the words "any persons" or "all

citizens." The Fifteenth Amendment dealing with suffrage and seeking only to remove the class discrimination which had clearly become a national problem could only accomplish this purpose by use of the words "race, colour or previous condition of servitude," which would clearly designate the class to be protected.

ii. *Sex Discrimination Not a National Problem.*

The Fourteenth Amendment, by the use of the words "all citizens" and "any persons," included under its equal protection all sexes and ages as well as races. It was early decided in *Strauder vs. West Virginia* (100 U. S. 303), that a State statute excluding negroes from service on juries was obnoxious to the amendment as denying to that race the equal protection of the laws. It might perhaps have been held, had the case arisen, that a State law excluding persons of certain religious faiths from juries would be void for the same reason. Such are the kinds of discriminations that the national power may be legitimately concerned in preventing.

But it is equally certain that neither the exclusion of women from juries nor the exclusion of minors is in any sense a denial to women or to minors of the equal protection of the laws. Why this should be so, though the amendment protects both women and minors from deprivation of their property without due process of law, is a logical puzzle only to those who blind their eyes to the cardinal difference between racial, religious or class discriminations and those that being based on age, sex, or even physical and mental capacity as such, are not class discriminations at all, for they affect all classes equally.

Certainly the Fourteenth Amendment literally construed would avoid all State statutes or unwritten laws imposing disabilities of one kind or another on in-

fants or married women. The fact that many of the latter have been voluntarily removed by the States in no way affects the argument. The fact is that sex and age distinctions are so interwoven in the municipal law of every State or country in the world that their abolition by any external power whatever would be utterly inconsistent with the recognition of any right of autonomy or even civil legislation by the State or nation affected.

iii. *The Nineteenth Amendment Forbids Natural Distinctions Common to Every Code.*

This Court has recently and in the words of the late Chief Justice expressed the basic effect of the Fifteenth Amendment as follows:

"Beyond doubt the amendment does not take away from the State governments in a general sense the power over suffrage which has belonged to those governments from the beginning, *and without the possession of which power the whole fabric upon which the division of state and national authority under the Constitution and the organization of both governments rest would be without support, and both the authority of the nation and the state would fall to the ground.* In fact, the very command of the amendment *recognizes the possession of the general power by the State,* since the amendment seeks to regulate its exercise as to the particular subject with which it deals." (Italics ours.)

Guinn vs. U. S., 238 U. S. 347.

The words we have italicized are an absolute assent by this Court to our principal contentions in this case, that without the control of the suffrage left directly to the people in their several States, where alone, as Chief Justice MARSHALL said they can act at all (*McCulloch vs. Maryland*, 4 Wheat. at p. 402) there is no legiti-

mate source of authority either State or National. The perversion of the authority belonging thus to the people of every State to ends subversive of national harmony by certain class discriminations was forbidden by the Fifteenth Amendment, but the ineradicable authority of the people in their several States to control the suffrage as the root and foundation of all self-government was clearly admitted by the amendment itself.

In just the same way the Fourteenth Amendment clearly recognized the powers of the States to prescribe and enforce all their general municipal law of property, contracts, crimes, domestic relations and everything else therein embraced, subject only to the prohibition of *arbitrary* discriminations. This did not mean sex and age discriminations, for they are *not* arbitrary, but *natural*.

A municipal law that could not take into account differences of age and sex would be imperfect and absurd.

And by the same token an electoral law that cannot take into account such differences will be largely imperfect and absurd.

iv. *Summary.*

The Nineteenth Amendment invades a totally new sphere from the constitutional point of view,—a sphere essentially belonging to municipal law and therefore to the States. It has no relation whatever to any national problem, past, present or future. Women are not the “wards of the Nation.” The family is, however, the foundation of the State and if an arbitrary rule of suffrage is imposed upon the State that may break into and overthrow its whole domestic law it is plain that the State has lost “in a general sense the power over suff-

rage which has belonged to it from the beginning and without the possession of which power * * * both the authority of the Nation and the State would fall to the ground."

Prohibiting race discrimination is a vitally different matter from imposing sexual equality. If any State can be coerced into rewriting its law of property or domestic relations so as to eliminate sex discriminations it has no independence in regard to legislation left. Granting only for the sake of argument that independence in regard to the subjects of ordinary legislation does not really belong to any State as against the amending power under the Constitution, yet it is equally true that if a State can be coerced into eliminating sex discrimination or age discrimination in its suffrage laws it has no independence left in regard to suffrage.

We submit that it is proven, and this Court has already held, that the State's independence in regard to suffrage is the basis of all authority, both State and National, and that the whole fabric of the Constitution rests upon it alone.

The substantial difference then between the Fifteenth and Nineteenth Amendments is that one imposes conditions upon the exercise of the power over suffrage, while the other appropriates the power to itself, imposing upon the State and the Nation an arbitrary rule of sex uniformity from which there can be no relaxation or escape, creating a new electorate or body politic in all male suffrage States, and thus changing or depriving these States of their suffrage in the Senate, and making it impossible for them under their own laws to consent or refuse to consent to this or any other amendment whatever.

One amendment protects the Nation from what was deemed a disruptive perversion of power, the other destroys the State and substitutes for popular sovereignty under the Constitution an unwieldy, irresponsible and impossible scheme of vesting ultimate sovereignty only in two-thirds of Congress and three-fourths of the Legislatures, conceding to these bodies collectively even the power of changing or abolishing the very constituencies that elected them.

II. THE NINETEENTH AMENDMENT HAS NOT BEEN RATIFIED, NOT HAVING RECEIVED THE ASSENT OF THREE-FOURTHS OF THE STATES.

There are two heads of this proposition. The first is that **in fact** the Legislatures of Tennessee and West Virginia did not ratify the Amendment. The second is that even if they had done so their act was without effect **in law**, for neither of them was competent to do so under the law of its creation, and for the same reason the alleged acts of ratification by the Legislatures of Missouri, Texas and Rhode Island were also without effect.

1. Tennessee and West Virginia in Fact Rejected the Amendment.

This proposition depends on the facts proved in this case as hereinbefore set forth ("Statement of the Case," ante, pp. 8-14) which need not be here repeated. These facts include the legal criteria established by decisions in those states to determine the *factum* of the expression of the Legislative will. These decisions and their effect have been discussed and set forth (ante, pp. 11, 13).

We submit that under those facts and decisions if it were a question in any case depending in the Courts of either State, whether its Legislature had passed the resolution of ratification or had defeated it, the decision of

those Courts would be that the resolution had been defeated.

The act of passing the resolution *whatever the source of power to ratify* is an authentic act of the Legislature *et non* according as the established forms required for the performance of that act have been complied with, so far as by the law of the jurisdiction in which the act occurs those forms are essential to its authenticity.

We are dealing not with the power but the authenticity of the act.

In Tennessee it has been established that an act of either House does not and cannot become authentic as long as a motion to reconsider the same, duly entered, has not been duly defeated. In this case it affirmatively appears that reconsideration, so far from being duly defeated, duly prevailed, and that upon such reconsideration the original action was reversed.

If, in the meantime, by the use of political legerdemain, the *unauthentic* act of the House had not been proclaimed as authentic, through a misconstruction of the facts by the Secretary of State of the United States, produced by a misleading and incorrect certificate sent him by the then Governor of Tennessee, we submit that no one would now question the fact that the authentic act of that House had been to defeat the resolution.

If for no other reason than to prevent history being distorted, we submit, this Court should announce that in point of fact Tennessee never ratified.

As to West Virginia the facts are somewhat different and so is the local law. By the local law it appears that the Senate *finally defeated* the resolution of ratification

on March 3rd, 1920. It was, however, prevented by the refusal of the lower House, from adjourning, and when after an interval the two members absent on that date appeared, one of them only being recognized as entitled to a seat, and the other being ousted, the whole matter was brought up again, contrary to the established rules, and by the help of the former absentee who was seated, the resolution was again put to a vote and declared carried.

We have submitted that by the settled law of that State the earlier action of the House was under the circumstances its only authentic action in the premises (ante, p. 12).²

2. The Legislatures of Five States, Missouri, Tennessee, West Virginia, Texas and Rhode Island, Were Incompetent to Ratify This Amendment, and Their Ratifications Are Void.

That the 19th Amendment, without conferring the power to grant or withhold suffrage upon the Congress, invades the "local self-government" of every state is self-evident.

It impairs the sovereignty of the people of all the States by depriving them *pro tanto* of the right to decide for themselves who shall govern the States.

In the part of their constitutions known as the "Bill of Rights" the people of Missouri, Rhode Island, West Virginia and Texas have forbidden their legislatures to impair their right of "local self-government" and the people of Tennessee have forbidden the members of their legislature to record the "assent of their State" to any Federal Amendment proposed subsequent to their election.

Note 2.—Vermont's ratification, being by a Legislature elected after proclamation of the Amendment by an electorate recreated by the Amendment itself, must obviously be disregarded, on the general principle that the corporate assent to a reorganization changing the control of the corporation, when necessary, must be given prior to the taking effect of the change, or it is no real assent at all. There are only 35 other ratifications.

The Legislature of Tennessee having been elected before the amendment was proposed by Congress was incompetent.

The Legislatures of Missouri, Rhode Island, West Virginia and Texas were also incompetent, by reason of the express provisions of the law which creates them. These provisions are quoted hereinafter (post, pp. 108-110).

a. THE EXTENT OF THE POWERS OF LEGISLATURES.

When the people of all the States entered the Union they did not surrender to Congress the right to endow incompetent legislatures with "omnipotent" power by simply submitting Federal amendments to them for ratification.

The people did cede to the Congress the right to propose to their "legislatures," the very much restrained representative bodies which "made the laws for the people" such amendments as legislatures were competent to ratify.

But by the alternative method provided in Article V for which there can be no other purpose, the people, in the same sentence reserved to themselves, acting directly in State Conventions (the only way they can act directly in their sovereign capacity, *McCulloch vs. Maryland*, 4 Wheaton 403), the power to ratify Federal amendments as to which the legislatures were not "competent."

(Note, that even the people of three-fourths of the States thus acting directly are "incompetent" to deprive any State without its consent of its equal suffrage in the Senate.)

The people thus adopted the Constitution.

It was the only way they could have adopted it. For as MADISON said (5 Ell. Deb. 355):

“the Legislatures were incompetent to the proposed changes” * * * “it would be a novel and dangerous doctrine that a legislature could change the Constitution under which it held its existence.”

MASON also agreed with MADISON (5 Ell. Deb. 352). He said:

“The legislatures have no power to ratify it. They are the mere creatures of the State Constitutions and can not be greater than their creators. * * * Whither then must we resort? To the people with whom all power remains that has not been given up in the Constitutions derived from them. It was of great moment that this doctrine should be cherished as the basis of free government.”

How can anyone suppose that the framers when actually in the very act of following MADISON's and MASON's advice to submit the Constitution to the people themselves acting directly in State Conventions, nevertheless, in the same breath, by Article V, approved the other “novel and dangerous” method and authorized it to be applied at the pleasure of Congress.

If so, then the alternative provided for State Conventions was totally unnecessary.

In view of this it is legally doubtful if any of the 23 Legislatures in the male suffrage States counted as ratifying were competent to so amend the “male clauses” of their State Constitutions. It is legally certain that the Legislatures of Missouri, Rhode Island, West Virginia, Texas and Tennessee were not competent to ratify.

b. HAWKE VS. SMITH DISCUSSED.

All this was self-evident before *Hawke vs. Smith*, 253 U. S. 221.

It is claimed, however, that the Supreme Court in deciding that case changed the source of political power in the United States from the people of the United States to the Congress—turned the whole sovereignty of the people over to their creatures, the State Legislatures, whenever Congress so willed.

On the contrary, all that *Hawke vs. Smith* decided was that a State could not create new agencies for ratification other than those provided in Article V by making the legislature's ratification conditional on its being approved by popular vote.

This Court held that the Legislature or Convention, as proposed by Congress, was designated as the agency to express "*the assent of its State.*" (253 U. S. at 229.)

The Legislature of Ohio was to proceed as before to ratify or reject. It was attempted, however, to add a new machinery (not contemplated by Article V) to comprise part of the act of ratification.

Article V contemplates what it says, "legislatures" restrained as they had always been by the laws of their creation. It does not contemplate "legislatures plus a referendum," nor, on the other hand, "unrestrained, omnipotent" legislatures which had never before existed.

The people were certainly not giving to Congress in Article V the right to endow "incompetent" legislatures with unlimited powers to "unmake" the Constitution which they were not competent to approve.

"The people made the Constitution and the people alone can unmake it." *Cohens vs. Virginia*, 6 Wheaton 389.

No implication can grant such power to Congress. The discretion to "propose" to legislatures does not change the term "legislature" or endow the body so named with new powers. It does not abolish restraints inherent in the very nature of the political agent bearing that name or forming, in America at least, invariably, the limits of its power.

It is true the legislatures derive their power to ratify from Article V such amendments as their people have not prohibited them from ratifying by clauses in their State Constitutions.

But when they come to act on a Congressional proposal each Legislature speaks, not for the people outside its State, *but for its own State and people alone*, otherwise it would record something other than "the assent of its State."

In attempting to override the will of its own people incorporated by them into their organic law it attempts *to turn their refusal into an "assent."*

If Congress can remove, in its discretion, by "proposing" amendments to them, the shackles which the people of a State have imposed upon their Legislature then it is not the "*assent of the State*" which is recorded at all, but the unrestrained individual view of the members of its Legislature, perhaps elected (as 34 Legislatures were here) before the proposal was made by Congress, perhaps called into special session (as 30 Legislatures were here) and utterly lacking a popular mandate.

When the people of a State elect a Legislature on other issues, do they give it blanket authority to disfranchise them, or to dilute their votes by enfranchising others, by means of any Federal amendment to that end, which may be *subsequently* "proposed" by Congress?

The question answers itself, for in that event the people of every State hold all their political rights at the discretion of Congress and omnipotent unrestrained Legislatures.

Congress itself in delegating authority to Legislatures to expend money which it confides to their exclusive care for purposes which it designates has been held to recognize implicitly the complete subjection of those bodies to the people of the States that create them. *Haire vs. Rice*, 204 U. S. 291.

Could the Convention have intended on the contrary to subject the people to their Legislatures?

Yet that is the sole foundation upon which the asserted legality of the 19th Amendment rests.

If so, it completely destroys any residuary sovereignty in the people of the States.

When, on the other hand, the citizen votes for members of a State Convention under the alternative plan provided by Article V, newly called to act in his name upon a Federal amendment necessarily *previously* proposed by Congress, the issue is always direct and certain and the popular mandate complete.

c. RESTRICTIONS ON LEGISLATURES OF THE FIVE STATES.

The provision in the Constitution of Missouri is as follows:

"Article II, Sec. 3. We declare that Missouri is a free and independent State, subject only to the Constitution of the United States; and as the preservation of the States and the maintenance of their governments are necessary to an indestructible Union and were intended to co-exist with it, the Legislature is not authorized to adopt nor will the people of this State ever assent to any amendment or change to the Constitution of the United States which may in any wise impair the right of local self-government, belonging to the people of this State."

The provision in the Constitution of Tennessee reads:

"Article II, Sec. 32. No Convention or General Assembly of this State shall act upon any amendment to the Constitution of the United States proposed by Congress to the several States unless such Convention or General Assembly shall have been elected after such amendment is submitted."

The Texas Bill of Rights declares:

"Article I, Sec. 1. Texas is a free and independent State, subject only to the Constitution of the United States; and the maintenance of our free institutions and the perpetuity of the Union depend upon the preservation of the right of local self-government unimpaired to all the States.

Sec. 29. To guard against transgressions of the high powers herein delegated we declare that everything in this 'Bill of Rights' is excepted out of the general powers of government and all laws contrary thereto or to the following provisions shall be void."

As the only act of any Texas officials which could impair the right of local self-government of the State of Texas would be the action of the Legislature of the State of Texas in ratifying a Federal amendment having that effect, such action is "excepted out of the general pow-

ers of government," that is, forbidden by Sections 1 and 29 of the Texas Bill of Rights.

The Rhode Island Constitution (1843), says:

"ARTICLE I.

(Preamble to Bill of Rights.)

Declaration of Certain Constitutional Rights and Principles.

In order effectively to secure the religious *and* political freedom established by our venerated ancestors, and to preserve the same for our posterity we do declare that the essential and unquestionable rights and principles hereinafter mentioned shall be established, maintained and preserved and shall be of paramount obligation in all legislative, judicial and executive proceedings."

Sec. I. "In the words of the Father of his country we declare 'that the basis of our political system is the right of the people to make and alter their Constitutions of government, but that the Constitution which at any time exists, till changed by an explicit and authentic act of the whole people is sacredly obligatory upon all.'"

No action of the Rhode Island Legislature is "competent" to record "an explicit and authentic act of the whole people of Rhode Island" unless Congress in defiance of the people of Rhode Island can give it that competency, in which case it is certainly not "the free and voluntary assent of that State and her people to the 19th Amendment," involving a change in the male suffrage clause of her State Constitution.

The Constitution (1872) of West Virginia says:

"Article I, Sec. 2. The government of the United States is a government of enumerated powers and all powers not delegated to it, nor prohibited to the

States are reserved to the States or to the people thereof.

“Among the powers so reserved to the States is the exclusive regulation of their own internal government and police, and it is the high and solemn duty of the several departments of government created by this Constitution to guard and protect the people of this State from all encroachments upon the rights so reserved.”

If that is not a mandate to the Legislature of West Virginia, which is certainly one of the “several departments of government” of that State, not to vote for a Federal amendment which attacks her “internal government” by taking from her citizens in part the right to choose the voters of that State, it means nothing.

In face of that mandate to the people of West Virginia can anyone contend that the action of the West Virginia Legislature in voting to ratify the 19th Amendment, if in fact it so voted, expressed the free and voluntary “assent of that State” to its enactment. (Especially when her people had in 1916 by a majority of 98,000 defeated woman-suffrage!)

The above five States were among the “male suffrage States” that in each of their constitutions also contained a provision limiting their suffrage to “males.” These provisions were entirely consistent with the Federal Constitution. The members of these five legislatures were all bound, by their official oaths as such, to support and defend their State Constitutions. Nevertheless a majority in each, *as counted*, ignored their official oaths, violated the express provisions above quoted forbidding them to ratify, and sought to amend by indirection the “male” clauses.

d. LEGISLATURES ARE AGENTS OF STATES, NOT OF NATION.

We are dealing here not with the effect of the 19th Amendment if validly enacted, upon State Constitutions which it would of course supplant, but with the "competency," the power, of legislatures validly to record the "assent of their States" thereto.

The assent of a particular State must be the free and voluntary act of the people of that State however much it must conform to the method Article V has fixed.

The "legislature" which acts (however it derives its powers), is still composed of State officials elected, organized and acting in the orderly way prescribed by the Constitution of that State and necessarily subject to all the limitations prescribed therein, limiting its power to meet, prescribing the place of meeting, its dual form of organization, the procedure and all its powers.

In conformity with them, and not otherwise, it must record the "assent or dissent of its State."

If Congress can remove all the State restrictions on its powers and make it omnipotent, then its members are not members of the State Legislature at all, but *Federal officials acting under a Federal power*, and in no sense of the word would they record the "assent of their State" to a proposed amendment. The States as such would cease to take part in amending the Federal Constitution.

e. NO MASS SOVEREIGNTY ABOVE PEOPLE OF THE STATES.

There is no such political concept in this country as the people of the United States in the *aggregate*.

The people do not speak, never have spoken, and never can speak in their sovereign capacity, otherwise than as the people of the States.

The so-called "National" House of Representatives is elected every second year by "*the people of the several States.*" Const., Art. I, Sec. 2 (see 253 U. S. at 228).

There are but two modes of expressing their sovereign will known to the people of this country. One is by direct vote—the mode adopted by Rhode Island in 1788 when she rejected the Federal Constitution. The other is the method here generally pursued, of acting by means of conventions of delegates elected expressly as representatives of the sovereignty of the people.

Now, it is not a matter of opinion or theory or speculation, but a plain undeniable historical *fact*, that there never has been any act or expression of sovereignty in either of these modes by that imaginary community, "the people of the United States in the aggregate."

Usurpations of power by the *Government* of the United States there may have been and may be again, but there has never been either a sovereign convention or a direct vote of the whole people of the United States in the aggregate to demonstrate its existence as a corporate unit or self-contained political sovereignty.

Every exercise of sovereignty by any of the people of this country that has actually taken place has been by the people of the States as States.

No respectable authority has ever had the hardihood to deny, that, before the adoption of the Federal Constitution the only sovereign political community was the people of each State.

When the Confederation was abandoned and the Constitution was adopted by the people of the several States in their State Conventions the General Government was reorganized, its structure was changed, additional powers were conferred upon it, and thereby subtracted from the powers theretofore exercised by the State Governments; but the seat of sovereignty—the source of all those delegated and dependent powers—was not disturbed. The only change was in the form, structure and relation of their governmental agencies.

There was a new *government*, but no new “*sovereign people*” was created or constituted.

The people, in whom alone sovereignty inheres, remained just as they had been before.

MADISON said, in the Virginia Ratification Convention (3 Ell. Deb. 94):

“Who are parties to it? The people—but not the people *as composing one great body*, but the people as composing thirteen sovereignties.”

LEE, of Westmoreland, said (3 Ell. Deb. 180):

“If this were a consolidated government ought it not to be ratified by a majority of the people *as individuals* and not as States?”

CHARLES PINCKNEY, in the South Carolina Convention, said (4 Ell. Deb. 328):

“With us the sovereignty of the *Union* is in the *people*.”

In *McCulloch vs. Maryland*, 4 Wheaton 316, MARSHALL said for the Supreme Court (page 402):

“They (the people) acted upon it in the only manner in which they can act safely, effectively and

wisely on such a subject, by assembling in convention. It is true they assembled in their several States—and where else should they have assembled?"

Then, answering his own question, he conclusively disposes of any idea of a "mass people of the United States," in these words:

"No political dreamer was ever wild enough to think of breaking down the lines which separate the States, and of compounding the American people into one common mass. Of consequence, when they act, they act in their States."

Of course it may be denied that there were no such political dreamers then or are not now. But, after all these years, does anyone expect a new ultimate sovereign people—a mass people of America—different from and superior to the "people of the States" who ratified the Constitution, to be now discovered?

Or that the primary sanction upon which MARSHALL based the very supremacy of delegated Federal power, the action of the people of the States in ratifying the Constitution, will now be broken down?

Does anyone expect that legal sanction will now sustain this effort to "break down the lines which separate the States and compound the American people into one common mass" by striking down the restrictions which the only "people of the United States" known to MARSHALL'S Court or hitherto to American history, have placed upon their agents, their "legislatures," to preserve their ultimate sovereignty and self-government?

f. SOVEREIGNTY NOT TRANSFERRED TO AGENTS OF THE
PEOPLE.

It is with the power of the sovereign people of the United States to unmake *their* constitution, establishing *their* Federal Government which they themselves created, that we are dealing here. The question is whether that sovereignty has now been transferred to Congress and omnipotent State legislatures specially endowed by Congress, to the extent of depriving them, the only "people of the United States" who ever existed or can exist, of their inherent right to determine for themselves who shall exercise their sovereignty, who shall govern their States and elect *their* Congressmen and Senators.

If their Congress and legislatures, specially endowed by Congress, determine in whole or in part the suffrage qualifications for the people (and in doing so brush aside the restrictions the "people" in their State Constitutions have placed upon them as their agents),—if these omnipotent agents holding no popular mandate can even disfranchise the people direct, or what is the same thing, indirectly dilute their votes by enfranchising others; then the sovereignty of the people of the United States has become a myth.

This is the inevitable result of making a "scrap of paper" of the provisions of their State Constitutions, inserted by the people of the five States of Texas, Tennessee, Missouri, Rhode Island and West Virginia to protect themselves from this very abuse of power.

This disposes of the claim that the people of the States in ratifying the Constitution ceded away all right to curb or limit the "power" of their agents, the State Legislatures, in ratifying the Federal Amendments, who strange to say (according to the claim) though clothed with om-

nipotent power still remain mere agents of the people of the States for recording the "assent of their States," but assert the right nevertheless to negative the expressed will of their own people.

To whom according to this startling theory could the people of the States have ceded their sovereign rights when they ratified the Constitution?

Not to the mass of people inhabiting the territory embracing all the States, for there was no such community in existence and they took no measures for the organization of such a community. If they had intended to do so the very style "United States," would have been a palpable misnomer, nor would treason have been defined as levying war against *them*.

Not to the Government of the Union, even if Congress, which merely "proposes" to the States, and the legislatures Congressionally endowed with omnipotence by the proposal, can all be construed to be part of the Federal Government for this purpose. For in the United States no sovereignty resides in Government or in its officials.

As Daniel Webster said (Congressional Debates, Vol. IV., Part 1, page 565) :

"The sovereignty of government is an idea belonging to the other side of the Atlantic. No such thing is known in North America. Our governments are all limited. In Europe sovereignty is of feudal origin and imparts no more than the state of the sovereign. It comprises his rights, duties, exemptions, prerogatives and powers. But with us all power is with the people and they erect what governments they please and confer on them such powers as they please. None of these governments are sovereign in the European sense of the word, all being restrained by written constitutions."

In the Declaration of Independence, in the Articles of Confederation, in the Constitution of the United States, the corner-stone is the inherent and inalienable sovereignty of the people.

To have transferred sovereignty from the people to a government would have been to have fought the battles of the Revolution in vain—not for the freedom and independence of the people of the States, but for a mere change of masters. Such a thought or purpose could not have been in the heads or hearts of those who moulded the Union, who sought by the compact of Union to secure and perpetuate the liberties then possessed. Those who had won at great cost the independence of the people of their respective States were deeply impressed with the value of Union, but they could never have consented to fling away the priceless pearl of the sovereignty of the people of their States for any possible benefit therefrom. And they did not.

The people made the Constitution and the people alone can unmake it.

g. CONCLUSION.

It is therefore submitted that the limitations which the people of Texas, Tennessee, Missouri, Rhode Island and West Virginia put upon their State Legislatures in the organic law of their creation are valid and binding. That those five legislatures were "incompetent" to ratify.

Without them only 32 ratifications have been received. The so-called 19th Amendment, therefore, still remains "a mere proposal without obligation or pretensions to it."

III. CONCLUSION.

There are other points which might be urged against the validity of the 19th Amendment. Some of them have

been dealt with by other counsel in another case pending before this Court, and we do not feel we can profitably add to what has there been said.

These include the effect of Article IV of the Constitution, containing a guaranty to the States of a republican form of government, which means little or nothing if it does not mean self-government, as distinguished from the power of a mob (see *Luther vs. Borden*, 7 How. 1) or the power of a super-sovereignty which, in respect to their right of corporate self-government the people of the several states never intended to create, and as to which right "such supremacy does not exist." (*Collector vs. Day*, supra, p. 32).

Also it is contended with great force that the first ten amendments being contemporary with, and virtually conditional of, popular assent to the Constitution, contain guarantees irrepealable by any Constitutional power, short of the inherent sovereignty of the people of all the several States.

Also, we submit, that the power to amend the Federal Constitution does not include the power to amend State Constitutions in purely local matters, and that even if it does these could not be amended by mere legislatures that are singly incompetent to amend their own. If the Court holds, as we submit it should, that five such States have expressly forbidden their own Legislatures to ratify this particular amendment this point will be unnecessary to be decided, for the amendment itself must then fall to the ground.

We ask again the Court's consideration of all the prayers set out in the Fourth Assignment of Error (Record, pp. 164-8) and its ruling upon them, as they present succinctly what we respectfully submit is the law, upon each point involved in this case.

Although no prayer refers specifically to the cases of Texas and Rhode Island, whose Constitutions were not read to the Court below, yet this Court will notice them judicially, and include them in its opinion upon the matter of the 5th, 8th and 11th Prayers.

We submit that for the reasons given the decision of the Maryland Court of Appeals should be reversed.

Respectfully submitted,

THOMAS F. CADWALADER,

GEORGE ARNOLD FRICK,

WILLIAM L. MARBURY,

For Plaintiffs in Error.

(Appendix attached.)



APPENDIX A.



APPENDIX A.

HISTORY OF THE PROVISOS IN THE 5TH ARTICLE.

5th Ell. Deb. (Madison papers), p. 532.

Sept. 8—*Mr. Rutledge* said that he never would agree to give a power by which the articles relating to slaves might be altered by the States not interested in that property, and prejudiced against it. In order to obviate this objection, these words were added to the proposition:

“Provided that no amendments, which may be made prior to the year 1808, shall in any manner affect the 4th and 5th Sections of the 7th Article.”

As amended, agreed to, 9 to 1; (Del. No.), N. H. divided.

Sept. 15, p. 551—Art. 5 under consideration as above amended—Art 5 (as of Sept. 15, 1787):

“The Congress, whenever two-thirds of both Houses shall deem necessary, or on application of two-thirds of the legislatures of the several states, shall propose amendments to this Constitution, which shall be valid to all intents and purposes as part thereof, when the same shall have been ratified by three-fourths at least of the legislatures of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress: provided, that no amendment which may be made prior to the year 1808 shall in any manner affect the 1st and 4th clauses in the 9th Section of Article 1.”

Mr. Sherman expressed his fears that three-fourths of the states might be brought to do things fatal to particular states, as abolishing them altogether, or depriving

them of their equality in the Senate. He thought it reasonable that the proviso in favor of the states importing slaves should be extended, so as to provide that no state should be affected in its internal police, or deprived of its equality in the Senate.

Col. Mason thought the plan of amending the Constitution exceptionable and dangerous. As the proposing of amendments is in both the modes to depend, in the first immediately, and in the second ultimately on Congress, no amendments of the proper kind would ever be obtained by the people, if the government should become oppressive, as he verily believed would be the case.

Mr. Gouverneur Morris and *Mr. Gerry* moved to amend the article, so as to require a convention on application of two-thirds of the states.

[*Mr. Madison* debated this.]

The motion of G. Morris and Mr. Gerry was agreed to *unm. con.*

Mr. Sherman moved to strike out of Article 5 after "legislatures" the words, "of three-fourths," and so after the word "conventions," leaving future conventions to act in this matter, like the present convention, according to circumstances. On this motion—Massachusetts, Connecticut, New Jersey, aye, 3; Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, No, 7. New Hampshire divided.

Mr. Gerry moved to strike out the words "or by conventions in three-fourths thereof." On which motion—Connecticut, aye, 1; No, 10.

Mr. Sherman moved, according to his idea above expressed, to annex to the Article a further proviso—

“that no state shall, without its consent, be affected in its internal police, or deprived of its equal suffrage in the Senate.”

Mr. Madison. Begin with these special provisos, and every state will insist on them, for boundaries, exports, etc.

On the motion of *Mr. Sherman*—Connecticut, New Jersey, Delaware, aye, 3; New Hampshire, Massachusetts, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, No, 8.

Mr. Sherman then moved to strike out Article 5 altogether. *Mr. Brearly* (N. J.) seconded the motion; on which—Connecticut, New Jersey, aye, 2; New Hampshire, Massachusetts, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, No, 8; Delaware divided.

Mr. Gouverneur Morris moved to annex a further proviso—

“that no state, without its consent, shall be deprived of its equal suffrage in the Senate.”

This motion, being dictated by the circulating murmurs of the small states, was agreed to without debate, no one opposing it, or, on the question, saying No.

Col. Mason, expressing his discontent at the power given to Congress, by a bare majority, to pass Navigation Acts, which he said would not only enhance the freight, (a consequence he did not so much regard), but would enable a few rich merchants in Philadelphia, New York and Boston, to monopolize the staples of the Southern States and reduce their value perhaps 50 per cent., moved a further proviso—

“that no law in the nature of a Navigation Act be passed before the year 1808, without the consent of two-thirds of each branch of the legislature.”

On which motion—Maryland, Virginia and Georgia, aye, 3; New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, South Carolina, No, 7; North Carolina absent.

[*Randolph* and *Mason* then expressed their anxiety at the extent of powers given to Congress, and the dangers of tyranny. *Pinckney*, while recognizing imperfections, promised his support. *Gerry* stated his objections and dissent.

On *Randolph's* proposition—

“that amendments to the plan might be offered by the State Conventions, which should be submitted to and finally decided on by, another General Convention,”

All the states answered No.

On the question, to agree to the Constitution as amended, all the states, Aye.]